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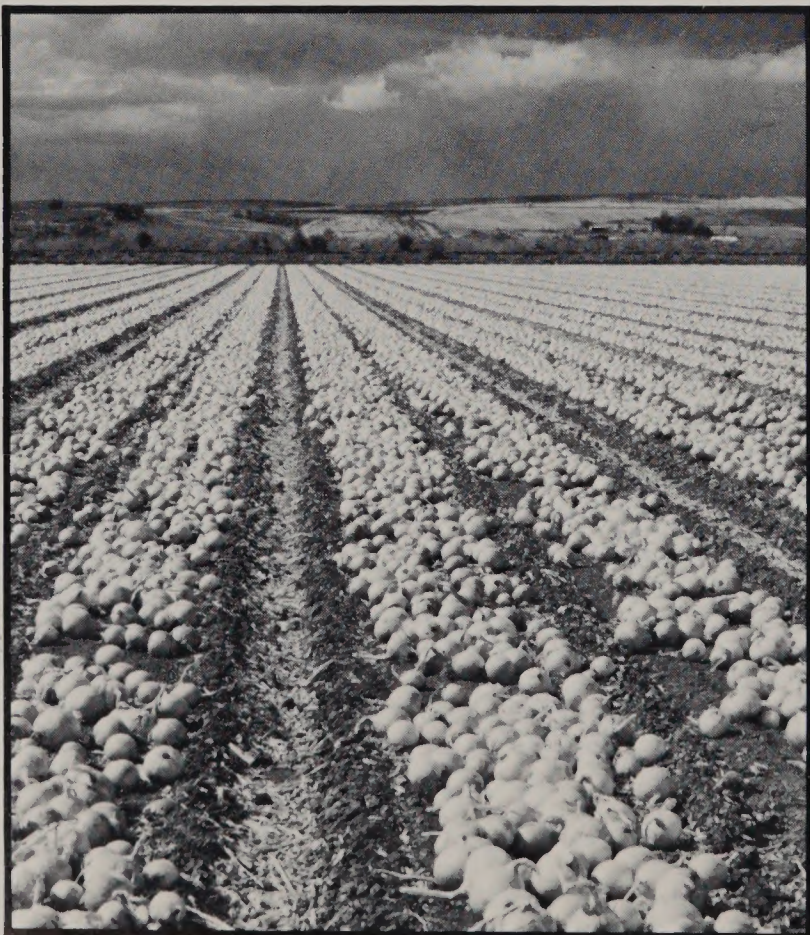
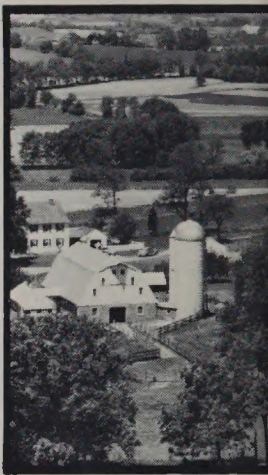
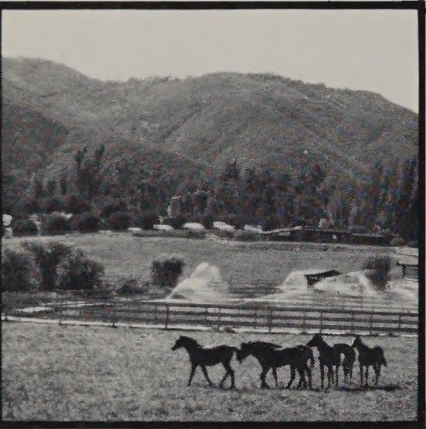
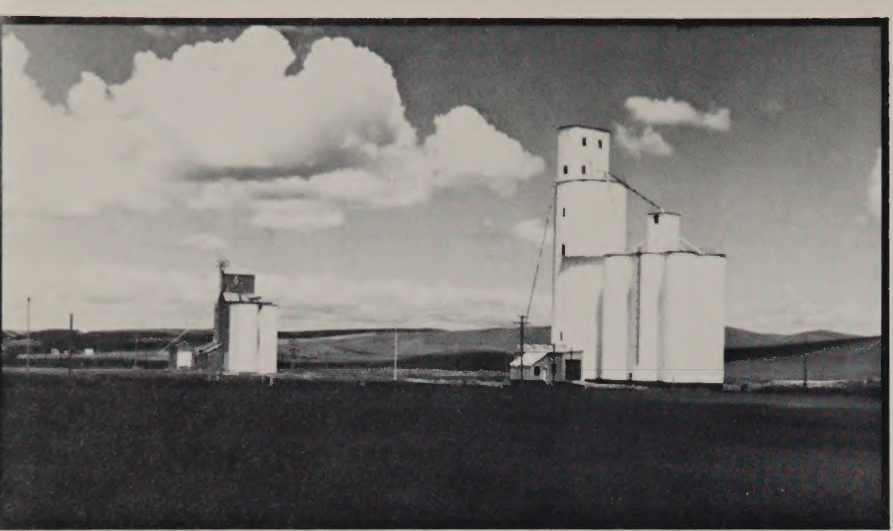


# National Agricultural Lands Study

Case Studies on State and Local Programs  
to Protect Farmland









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## National Agricultural Lands Study

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# Case Studies on State and Local Programs to Protect Farmland

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## Preface

A survey to identify as many farmland protection programs as possible was conducted prior to writing THE PROTECTION OF FARMLAND: A REFERENCE GUIDEBOOK FOR STATE AND LOCAL GOVERNMENTS. A group of significant programs chosen for more intensive study is presented in this volume.

Each study involved careful analysis of relevant documents and a one- or two-week visit to the jurisdiction. In some instances, even longer time was spent in the field.

Interviews were conducted with farmers, government personnel, civic leaders, businessmen, real estate agents, bankers, and others involved in or affected by the programs. The unstinting cooperation of those interviewed made these studies possible. Many not only gave generously of their time in interviews, but also reviewed drafts of the studies.

The case study programs were chosen so that the major techniques discussed in the GUIDEBOOK would be represented. Many of the case studies deal with agricultural zoning because of its present widespread adoption, and the probability that in the future it will be adopted by many more jurisdictions.

The major findings of the case studies are reported in the GUIDEBOOK, but each individual study is being made available in its entirety in this volume so that other analysts can examine them in detail.

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Readers who do not already possess the GUIDEBOOK may obtain it and all other major publications of the National Agricultural Lands Study (NALS) by writing to: Superintendent of Documents, Government Printing Office, Washington D.C. 20402.







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## I. AGRICULTURAL DISTRICTING





## Case Study No. 1

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AGRICULTURAL DISTRICTING IN VIRGINIA

By

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I. INTRODUCTION

In 1977 the State of Virginia enacted legislation which enables county and city governments to form agricultural and forestal districts, which are geographic entities and whose overall purpose is to protect "qualifying agricultural land from pressures arising from development."<sup>1</sup> This Virginia legislation, the Agricultural and Forestal Districts Act,<sup>2</sup> is modeled after an earlier (1971) New York State statute, although there are important differences (see Case Study No. 2, "Agricultural Districting in New York State").<sup>3</sup>

Both the New York and Virginia statutes were in large part responses to urban sprawl which threatened to disrupt, if not eventually eliminate, farming in large areas of those states (see Section I of the New York case study). Hiram Zigler, formerly on the staff of the Virginia Farm Bureau Federation, and one of the chief promoters of agricultural districting legislation in his state, defined the "problems brought on by development pressure" as including "higher taxes,...loss of good farm land,...{and} the accompanying forcing of agricultural production onto less fertile and harder-to-work land where costs are higher and yields are lower and the economic incentive is lessened."<sup>4</sup> He was alarmed by predictions that much or most of the farming areas between King George County (which is east of Fredericksburg) and Southampton County (west of Suffolk) would be urbanized. He found that,<sup>5</sup>

of the twenty-three Virginia counties with 40 percent or more of their land in Classes I and II {soils}, the best, only two are located west of Interstate 95--and all but two are within fifty miles of a line drawn between Colonial Beach {in King George County} and Courtland {in Southampton}. Here's where our cash food crops should be produced. But every economic study I'm familiar with describes ...the trend toward urbanization by calling that area the "Urban Corridor." It's here that I've observed that land which ought to be developed last is being developed first--in large chunks.

The loss of Virginia farmland to urbanization is reflected in the periodic censuses of agriculture conducted by the U.S. Department of Commerce. Table 1-1 indicates that between 1950 and 1978 more than 5.5 million acres of land were withdrawn from farm use. While much of that withdrawal resulted from farm abandonment, rather than conversion of land to nonagricultural uses, much also came from urbanization spreading out from Washington, D.C., Richmond, and other cities. The National Agricultural Lands Study estimated that, between 1967 and 1977 in Virginia, 1.4 million acres of agricultural land (including cropland, pasture land, forest land, and other land in farms) were converted to nonagricultural uses (urban, highways, reservoirs, etc.).<sup>6</sup>

Because of the observed and anticipated loss of good farmland, Hiram Zigler and other concerned persons in Virginia looked for a politically acceptable, promising-of-significant-results approach to protecting farmland. The agricultural districting approach emerged as their choice, and a bill incorporating it was signed into law by Virginia's Governor on April 3, 1977. This bill and its 1979 amendments provide for seven kinds of protections to land placed in agricultural districts (benefits which will be discussed at greater length in Section IV of this case study):

- (1) Land enrolled in districts can qualify for property tax assessments at the land's value for agricultural purposes, as opposed to its market value.
- (2) Land in districts is protected from local government ordinances that, aiming (for example) to curtail farm-derived nuisances, would restrict normal farming practices.
- (3) The right of eminent domain is limited, though not removed. State and Local government agencies and public service corporations are required to give serious consideration to alternative areas before they acquire farmland within districts. Local governing bodies may also veto such acquisitions.
- (4) Public expenditures designed to serve nonfarm development within districts (and, therefore, to encourage such development) are limited in the same ways as is the right of eminent domain.



Table 1-1

VIRGINIA'S LAND IN FARMS  
IN ACRES AND AS PERCENT OF TOTAL LAND AREA IN STATE

Year	Acres	Those Acres as Percent of State's Total Land Area (25,496,320 acres for years 1950-74 and 25,4459,520 for 1978)
1950	15,572,295	61.1%
1954	14,685,946	57.6%
1959	13,125,802	51.5%
1964	12,001,500	47.1%
1969	10,649,862	41.8%
1974	9,678,307	38.0%
1978	9,941,202*	39.1%

Sources: U.S. Department of Commerce, 1974 Census of Agriculture, Vol. 1, Part 46, Virginia, State and County Data (1977); and U.S. Department of Commerce, "1978 Census of Agriculture, Preliminary Report, Virginia" (1980).

Note: \*Most if not all of the increase between 1974 and 1978 resulted from a more thorough survey of landowners in 1978 in comparision to 1974.

- (5) Districted land used primarily for agricultural and forestry production is exempt from special tax assessments to pay for sewer, water, electricity, or nonfarm and nonforest drainage facilities.
- (6) The legislation instructs state agencies to "encourage the maintenance of farming and forestry in agricultural and forestal districts and {that} their administrative regulations and procedures shall be modified to this end...." (Section 15.1-1512 {C}).
- (7) When local governments make land-use planning and zoning decisions affecting parcels adjacent to an agricultural and forestal district, they are mandated to "take into account the existence of such districts and the purposes of this chapter" (Section 15.1-1512 {B}). In other words, they might feel constrained by this provision not to permit a nonagricultural development on such adjacent land where that development appeared likely to threaten the viability of farming in the district.

## II. ESTABLISHING AGRICULTURAL AND FORESTAL DISTRICTS

### A. Landowners' Initiative and Right to be Excluded

Unlike the New York agricultural districting program, Virginia' provides that only landowners may initiate the formation of a district; and any landowner who wants to be excluded from a district has an unqualified right to be so excluded. New York's districting legislation provides that, to protect "unique and irreplaceable agricultural lands," the Commissioner of Agriculture and Markets may create districts containing such land, after consulting with local interests and other state agencies.<sup>7</sup> Moreover, in the New York program, landowners may find their property included in a district, despite their expressed wishes to be excluded, whether a district is formed by local initiative or by the Commissioner of Agriculture and Markets. All that is needed in New York is that owners of at least 500 acres of land or ten percent of the total acreage proposed for a district sign the petition to create one. Owners of parcels proposed for the district who do not sign the application are notified and given the opportunity to protest the inclusion. However, for the sake of creating larger and/or more compact districts, New York county legislatures have denied requests for exclusion.<sup>8</sup>

In contrast, in Virginia only landowners may initiate districts; and no parcel may be included without its owner's written consent. To be eligible for consideration,<sup>9</sup>

- a proposed district must contain at least 500 acres;
- its constituent parcels must be contiguous, except that noncontiguous land may be included if it is within one mile of the contiguous "core" acreage, and that "core" itself has a minimum of 500 acres with "one closed exterior perimeter line;"<sup>10</sup>
- no single owner may own more than 3,500 acres on land to be included in any one or more districts in the state.

B. Disposition of Applications by the Local Governing Body

Applications must include the names, signatures, and addresses of the landowners proposing the district; the acreage each owner intends to place in the district; and maps showing the boundaries of both the proposed district and its constituent parcels. The completed application is submitted to the local governing body, which may be the county board or city council, which in turn refers the application to its planning commission. This later body publishes a public notice about the proposed district and for a period of 30 days invites comments from interested parties, including any municipality with territory in the district and landowners who signed the application but may have second thoughts. Such owners may withdraw their land or parts of it at any time until the local governing body makes its final decision on whether to create the district. Within these 30 days, municipalities must propose whatever modifications they desire, such as to delete land which lies within their boundaries.

At the end of this initial 30-day period, the application with any modifications is referred to the local governing body's Agricultural and Forestal Districts' Advisory Committee. The Virginia districting law (like New York's) mandates that such a committee be established upon the receipt of the first application to create a district (Section 15.1-1510 of the statute). These committees are required to consist of "four landowners who are actively farming, four other freeholders {i.e., real-property owners}, and a member of the local governing body {i.e., county board or city council}."<sup>11</sup> These committees'



most important advisory role, according to the statute, is "to render expert advice" on the desirability of establishing the proposed district, including the issue of how viable farming and/or forestry is in the area under scrutiny.<sup>12</sup>

The advisory committee has 30 days in which to make its report to the planning commission, which in turn has another (or third) 30-day period to hold a public hearing and then drafts its own recommendations, on the proposed district. Virginia's districting law mandates that both the advisory committee and the planning commission consider, among other factors, "the agricultural and forestal significance" of the land proposed for the district (i.e., how productive it is), "land uses other than active farming or forestry within the proposed district and adjacent thereto" (i.e., residential or other nonagricultural uses which may hinder viable farming because of the proximity), and "local developmental patterns and needs" (i.e., whether there is a trend towards non-agricultural development or whether local authorities believe that land proposed for a district is required for the community's housing or other nonagricultural needs).<sup>13</sup> The statute defines "Agriculturally significant land" to "mean land that has historically produced agricultural and forestal products, or land that is considered good agricultural and forestal land by an advisory committee based upon factors other than soil quality such as topography, climate, markets, farm improvements, agricultural economics and technology, and other relevant factors."<sup>14</sup> This flexibility regarding soil quality, that is, not automatically excluding land with low-rated soils, has permitted districts to include parcels with poorer soils. A planner in one Virginia county reported three such cases -- parcels used for a turkey farm, for growing Christmas trees, and for grazing livestock.<sup>15</sup>

After the planning commission submits its recommendation on the proposed district, the local governing body holds another public hearing and then may totally reject the planned district, accept it as proposed, or modify it before enacting an ordinance to establish it as a legal entity. The modifications may be either to include "adjacent significant farm and forest lands, if agreed to in writing by the owners{s} ...{or to exclude}..., to the extent feasible, ...nonsignificant agricultural and...forestal land and nonfarm and nonforest land."<sup>16</sup> Unlike the formation of agricultural districts in New York state, there is no provision for a state-level agency to review and perhaps modify local-government decisions on the creation of districts. In Virginia the whole review process by local government is required to be completed within 180 days of the date that a district application is submitted.



### III. RENEWAL OF DISTRICTS AND WITHDRAWAL FROM THEM

#### A. Renewals

The Virginia law permits the beginning and subsequent terms for districts to vary between four to eight years, with this range representing a political compromise between those wanting to maximize the period of benefits and those concerned with maximizing the landowner's freedom of action. However, this four-year range has the advantage over fixed periods of commitment in that counties can deliberately stagger the first terms of different districts so that several or all expire in the same month. For example, Hanover County has three districts running for six years from September 1978 to September 1984 and another three with five-year terms extending from April of 1979 also to September 1984. Therefore, Hanover's Board of Supervisors can review all six at the same time. Simultaneous review permits, for example, the possibility of combining two or more districts into larger, agriculturally more viable districts. Alternatively, as some landowners pull out of districts, truncated ones could be combined.

In conducting these reviews, local governments are required to seek the recommendations of both the local planning commission and the agricultural and forestal districts' advisory committee.<sup>17</sup> If the local governing body fails to initiate review proceedings, a district's "existence as initially constituted is self-renewing for one or more additional periods equal in length to the initial period."<sup>18</sup>

#### B. Withdrawals

According to J. Paxton Marshall, there are three ways for parcels to be withdrawn from a district once it is formed:<sup>19</sup>

- (1) If the owner who originally signed to participate or a subsequent owner dies, "Any heir at law or devisee of an owner... {of districted land} shall as a matter of right, be entitled to withdraw immediately from any such district upon the inheritance or descent of such land" (Section 15.1-1513 {D}).
- (2) The local governing body can accede to a petition from an owner to withdraw land, after that body holds a public hearing and it

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finds a "good and reasonable cause" to do so (Section 15.1-1513 {A}). Among such causes might be that the land had proven to be no longer viable for commercial farming.

- (3) If the local government does not agree to release land from a district, its owner(s) "shall have an immediate right of appeal de novo to the circuit court wherein such applicant's land is located" (Section 15.1-1513 {A}).

If, by whatever of these three means, land is released, that land immediately loses the special protections offered to districted land (see the next section of this study); and if it had been enjoying use-value assessment and then is developed its owners would be subject to a roll-back tax, i.e., "the sum of any deferred tax plus the applicable simple annual interest for each applicable year not to exceed six successive years."<sup>20</sup>

### IV. PROTECTIONS OFFERED BY VIRGINIA'S AGRICULTURAL AND FORESTAL DISTRICTS LAW

#### A. Protection from High Real Property Tax Assessments Based on Market Value of Land

Parcels included in a district "shall automatically qualify for an agricultural and forestal value assessment" (Section 15.1-1212 {A}) if they meet the statutory requirements for such assessment, that is, being a minimum of five acres each; having been in agriculture, horticulture, or forestry for at least the past five consecutive years; and satisfying certain production standards (e.g., yields for cropland, number of livestock).<sup>21</sup> Regardless of whether the land is districted, owners of farm and forest land may apply for use-value assessment if their own counties or cities have enacted ordinances authorizing such assessment. Virginia law permits each jurisdiction to decide whether it will be available to landowners generally. As of September 1, 1979, fifty-two of Virginia's 95 counties had adopted ordinances permitting use-value assessment.<sup>22</sup> The "automatic" qualification given to land in an agricultural and forestal district (if it meets the minimum acreage, time and other technical standards) means that the land may receive lower assessments whether or not its local governing body has adopted such an ordinance. In addition, if after a district is established, a county or city decides to repeal that ordinance, land in the district may continue to enjoy use-value assessment for the duration of the district (including renewal periods).

In other words, participating in a district is a means to circumvent local government resistance to use-value assessment. In at least one Virginia county, King William, a district was created before the County Board of Supervisors had approved use-value assessment for the general landowner. The threat of counties and cities discontinuing use-value assessment tends to arise when local officials ask whether they can fiscally afford to keep on losing revenues because of the lower assessments and/or when nonfarmland property owners rebel against the privileged status accorded to farmland, especially when they see that many of the beneficiaries are not genuine farmers but developers or speculators who are holding the land in an undeveloped state.

B. Protection from "Unreasonable" Restrictions Imposed by Local Governments

Section 15.1-1512 {B} of the Virginia districting law provides:

No local government shall exercise any of its powers to enact local laws or ordinances with{in} an agricultural or forestal district in a manner which would unreasonably restrict or regulate farm structures or forestry and farming practices in contravention of the purposes of this chapter unless such restrictions or regulations bear a direct relationship to public health and safety....

The chapter's purpose, as stated in the law's preamble, is "to provide a means by which agricultural and forestal land may be protected and enhanced as a viable segment of the State's economy and as an economic and environmental resource of major importance" (Section 15.1-1507). Among the kinds of local ordinances which may be found unreasonable for enforcement within a district are those "designed to prohibit carrying-out in timely manner such regular farm practices as the spreading of manure, the burning off of land, or the spraying of field crops {and} orchards...."<sup>23</sup> Other candidates for nonenforcement within districts are building code regulations regarding "the placement, height, and configuration" of farm structures.<sup>24</sup>

C. Protection from Acquisition of Land within Districts by State and Local Government Agencies and by Public Utilities

A new highway right of way or power-line corridor may severely disrupt farming operations if it cuts fields into



triangles, trapezoids or other hard-to-farm shapes. When limited-access freeways are sited through farming areas, farmers may have to travel a mile or more to find an overpass or underpass by which to get access to fields which the new road has divided. Highway interchanges, as well as reservoirs, park projects, and power plants, among other facilities, may take enough land from individual farms that the latter no longer remain viable, and the farmers must resettle elsewhere. Farmers who resist the taking of their land by public and quasi-public agencies may be forced to acquiesce, if those agencies enjoy the right of eminent domain (See Case Study No. 18 for a discussion of the negative impacts on farming which may result from public agency-takings of land).

Virginia's agricultural districting law (Section 15.1-1512 {D}) gives such farmers in districts some protection against eminent-domain takings. If a state or local government agency plans to acquire more than 10 acres "from any one actively operated farm or forestry operation" within a district or more than a total of 100 acres from any one district, and (b) that acquisition would not be by "gift, devise, bequest or grant to such agency," or (c) if a public service corporation intends to obtain the same amount of land from a district for kinds of "public utility facilities not subject to approval by the State Corporation Commission," certain obstacles are placed in the way of the taking:<sup>25</sup>

- (a) The agency planning to acquire such land must notify the local governing body which created the district no later than 30 days before the land would be obtained. Accompanying the notification must be "a report detailing all reasons in justification for the proposed action including an evaluation of the alternatives which would not require action within the agricultural and forestal district."
- (b) This report is reviewed by the local governing body, in consultation with its agricultural and forestal district advisory committee and the local planning commission. If this review concludes that the land taking "might have an unreasonably adverse effect upon" the "preservation and enhancement of agricultural and forestal resources within the district," the local governing body (e.g., county board of city council) issues and order restraining the taking agency from

acting for an additional 60 day period. Such an order must come before the end of the initial 30-day notification period.

- (c) During the second period of delay (60 days), the county board or city council must hold a public hearing on the proposed taking. If after that hearing, the local governing body is still convinced that the taking, or whatever modification the taking agency is willing to make in its plans, would be against the purposes of the districting law and/or would not be "necessary" in terms of providing "services to the public in the most economical and practicable manner,"<sup>26</sup> that local legislature can issue a "final order" prohibiting the taking. However, the agency planning to acquire land can appeal that order to the circuit court. If the "taker" is a public service corporation regulated by the State Corporation Commission, the appeal is directed to that Commission. J. Paxton Marshall believes that most of the cases heard on appeal by this Commission will concern "the location of high voltage (that is, trunk) utility lines."<sup>27</sup>

In effect, the local governing body can hold up the taking for as long as 90 days before issuing its own final ruling on the project. And if the ruling is negative, the delay will continue at least until a court appeal is heard and decided. The court may decide for the local government; or to avoid such a long delay, the taking agency might either choose a site outside any district or redesign the project to the satisfaction of the local governing body. For example, a highway might be relocated so as to follow property lines rather than cut across farmland diagonally; or a park project might be shifted onto land of lower agricultural productivity. Also, the long delay might be used by opponents of the proposed taking to lobby state or federal sources of funds for the taking project (e.g., airport or park) to put pressure on the taking agency to change its plans.

#### D. Protection from Nonfarm Development Funded by State or Local Government Agencies

While government agencies might not directly acquire land within agricultural areas to use for nonfarm purposes, they may fund development projects which have the same effect--taking farmland out of production. Virginia's agricultural districting act provides some protection against such agencies which intend "to advance a grant, loan, interest subsidy or



other funds within a district for the construction of dwellings commercial or industrial facilities, {and} water or sewer facilities to serve nonfarm structures..." (Section 15.1-1512 {D}). The protection takes the same form as if a state or local government agency or public service corporation intended to acquire land from within a district: requiring a 30-day prior notice and providing for a possible further 60-day delay, with a public hearing and then possibly a negative "final order", appealable to the circuit court or to the State Corporation Commission.

State and local authorities in Virginia have interpreted this limit on public expenditures within districts to extend to projects for widening and improving roads. By March 1980 representatives of the state highway department had appeared at the public hearings on the formation of several districts to protest their creation, if a result would be that roads within them could not be upgraded to handle expected increases in traffic. In at least one case, the county government coped with this potential problem by excluding from the district both the existing public roads likely to be affected and additional land alongside them which was anticipated to be needed for widening the rights of ways.<sup>28</sup>

E. Protection from Special Tax Assessments to Pay for Public Water, Sewer, and Certain Other Facilities Serving Nonfarm Development

If sewer or water lines, electricity, or nonfarm drainage facilities are extended into a district, farmers within that district are protected from special tax assessments to pay for those facilities. Section 15.1-1512 {E} of Virginia's districting act provides:

No special district for sewer, water or electricity or for nonfarm or nonforest drainage may impose benefit assessments or special tax levies on land used for primarily agricultural or forestal production within an agricultural and forestal district on the basis of frontage, acreage, or value, except a lot not exceeding one-half acre surrounding any dwelling or nonfarm structure located on such land, unless such benefit assessment or special ad valorem levies were imposed prior to the formation of the agricultural and forestal district.

One example of circumstances in which such assessments might otherwise be imposed is when a water district runs a water line

out to a residentially developed area which is in the midst of an agricultural district.<sup>29</sup> Without the protection offered by this section of the districting act, farmland along the line's path might be specially assessed.

F. Protection from State Government Regulations and Procedures which are Detrimental to Farming

Section 15.1512 {C} of Virginia's districting law provides:

It shall be the policy of all State agencies to encourage the maintenance of farming and forestry in agricultural and forestal districts and their administrative regulations and procedures shall be modified to this end insofar as in consistent with the promotion of public health and safety and with the provisions of federal statutes, standards, criteria, rules, regulations, or policies, and any other requirements of federal agencies, including provisions applicable only to obtaining federal grants, loans or other funding.

Despite the several qualifications (e.g., consistent with public health and federal requirements), this provision has the potential of helping farmers in districts escape unreasonable state regulations. Among the rules which might be waived or softened for farming within districts might be those affecting "management of game and wildlife preserves located near an agricultural district" <sup>30</sup> and those concerning the use of public highways by extra-wide and/or slow-moving farm machinery. For example, farmers in districts might be able to demand that the state agency managing a nearby wildlife preserve remove from districted farmland any animals which had strayed from the preserve and were damaging crops.<sup>31</sup>

G. Protection from Disruptive Nonfarm Development Adjacent to Districts

While the local governing body which creates a district might strictly protect that district from eminent-domain takings of land and from sewer-construction and other public investments which stimulate nonfarm development on land within the district, it may allow residential or other development to occur just adjacent to the district and, thereby, permit consequences which offset the positive effects of districting. From that adjacent nonfarm development might come crop-damaging trespassing (e.g., subdivision children, perhaps with trail bikes), stormwater runoff which floods fields, and vehicle traffic which hinders use of public roads by farm machinery, among other negative impacts on farming.



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To prevent such offsetting effects, the Virginia districting legislation was amended in 1979 as follows: "Land use planning decisions or ordinances...affecting parcels of land adjacent to any district created pursuant to this chapter shall take into account the existence of such district and the purposes of this chapter" (Sec. 15.1-1512 {B}). In practice, this amendment may be able to block development on adjacent land or serve to promote types of development which are relatively compatible with agriculture. For example, farmers in a district near Richmond opposed a subdivision planned for adjoining land, on the grounds that the numerous nonfarm families settling there would make bad neighbors to their farming operations. They preferred and obtained zoning which provided for a minimum of ten acres per homesite, believing that this density would be tolerable for their farming. According to two members of the affected district who were interviewed, their properties' status as parts of an approved agricultural district helped to persuade county officials to decide for the lower density.<sup>32</sup>

### V. EFFECTIVENESS OF THE DISTRICTING LAW: ATTRACTING LANDOWNERS TO PARTICIPATE IN DISTRICTS

#### A. Districts Formed as of September 1980

Virginia's first agricultural and forestal district was formed in May 1978. By mid-September 1980 landowners had organized and local governments had approved a total of 39 districts, which together covered 158,288 acres (see Table 1-2). These districts were found in 13 of Virginia's 95 counties, and they averaged 4,049 acres each. For six of the counties, we had data on the total numbers of landowners involved in organizing districts (see the last column to the right in Table 1-2). They ranged from only three in one district in Shendandoah County to 47 who formed a district in Isle of Wight County. Districting appeared to be spreading quickly in 1980. In the five months between mid-March and mid-September of that year, the total number of districts grew from 21 to 39; and overall acreage committed to districts rose by 117 percent, from 73,018.0 acres to 158,288.4 acres.<sup>33</sup> As Table 1-3 indicates, two-thirds of the districts formed as of mid-September 1980 were approved for the maximum number of years, eight; only three were created for the minimum term (three years).

#### B. Landowner Motivations for Forming Districts

To obtain some understanding of landowner motivations for forming districts, we interviewed farmer participants in three Virginia counties (Hanover, Isle of Wight and King William, where two landowners were interviewed in each county)

Table 1-2

AGRICULTURAL AND FORESTAL DISTRICTS  
IN VIRGINIA AS OF SEPTEMBER 18, 1980, BY COUNTY

County	Total acres in districts Sept. 1980	Those acres as % of county's total land in farms (1978)	Number of districts Sept. 1980	Average acreage per district	Total no. of landowners in all districts	Average no. of land owners per district
1. Accomack	1,203.4	1.2%	1	1,203.4	NA	NA
2. Clarke	2,976.0	3.9%	1	2,976.0	NA	NA
3. Culpeper	31,667.4	22.5%	7	4,523.9	NA	NA
4. Fauquier	12,655.2	5.1%	2	6,327.6	NA	NA
5. Hanover	15,104.7	12.3%	6	2,517.5	49	8.2
6. Isle of Wight	8,300.0	8.6%	1	8,300.0	47	47
7. King William	3,730.0	6.3%	5	3,723.0	9	1.9
8. Loudoun	66,021.2	28.9%	9	7,335.7	NA	NA
9. Montgomery	3,329.0	3.2%	2	1,664.5	NA	NA
10. New Kent	1,182.7	4.7%	1	1,182.7	NA	NA
11. Prince William	3,466.8	5.6%	2	1,733.4	28	14
12. Shenandoah	784.0	0.6%	1	784.0	3	3
13. Warren	7,868.0	14.3%	1	7,868.0	33	33
Totals	158,288.4		39	--	--	--
Averages	--	9.0%	3	4,058.7*	--	--

Sources: Virginia Department of Agriculture and Consumer Services; U.S. Department of Commerce, "1978 Census of Agriculture," Preliminary Reports for each of these 13 counties.

Notes: NA = data were not available.

\*The total acres which were districted (158,288.4) divided by the total number of districts (39)



Table 1-3

TERMS OF  
VIRGINIA'S AGRICULTURAL AND FORESTAL DISTRICTS  
APPROVED AS OF SEPTEMBER 18, 1980

---

Approved for	Number of districts approved for that period
4 years	3
5 years	4
6 years	6
7 years	0
8 years	26

---

Average Term (for the 39 districts) - 7.1 years

Source: Virginia Department of Agriculture and  
Consumer Services

and planners in two other counties (Fauquier and Loudoun) who reported on their perceptions of why the farmers with whom they worked on district formation wished to participate.

### 1. To Avoid Nuisance Ordinances

According to these interviews, there were at least two Virginia agricultural and forestal districts which were formed in large part as responses to subdivision developments planned or under construction. A farmer who joined in organizing one of those districts said that he faced a 100-home subdivision developing next to his property; "With our grain dryers and cattle, they {the development's residents} would be raising hell over noise and smells."<sup>34</sup> However, with his land in a district, he expected to be safe from all or most of the complaints his new neighbors might lodge with the Sheriff's Department. The planner in a second county remembered about the organization of another district: "There was a timely threat that helped in the formation of one local district. There was a farm with 1,500 acres that some Chicago developers wanted to turn into three-acre building sites. That got it {the district} off the ground real quick."<sup>35</sup>

### 2. To Be Assured of Use-Value Assessment

As discussed above in Section IV of this case study, farmland owners in Virginia who remain outside districts may obtain the benefits of use-value assessment only if their local governments elect to make those benefits available generally in the jurisdiction. Some of the landowners whom we interviewed saw participation in districts as an insurance policy against the time when their county governments opt to drop use-value assessment. They might discontinue it because of revenue needs. Use-value assessment on properties with high development potential tends to mean lower tax receipts on that land; and if enough such properties are found in one county, the total amount of tax receipts foregone might be large enough to tempt county officials to vote to end the assessment preferences.

### 3. To Influence Local Government to be More Protective of Farming Sector

A farmer who participated in forming a district in Hanover County explained that his motivations and those of neighbors included the intention of impressing county government with their commitment to staying in farming and, perhaps also, with the weight of their votes and other political influence which stood behind that commitment:<sup>36</sup>



We all favored the district because we thought it would encourage the county supervisors to remember that this was a farming county. If they could keep this in mind when making decisions affecting county development {e.g., regarding new subdivisions}, hopefully we could avoid some of the bad decisions that hurt surrounding counties.

4. To Protect the Land so that Farmers' Children and Grandchildren Would be Able to Farm There

One of the farmers and a planner whom we interviewed reported that a major motivation for participating in districts was a desire to protect land so that farmers' children and grandchildren could farm there if they wished:<sup>37</sup>

Many farmers wanted to make sure that their families would be able to work the land. Some of the farms have been in one family for two or three generations. (A planner for Loudoun County).

They are old homes; some of them date back to the 1700s. We want to preserve what we have. I want to be able to pass on what I have to my son to continue to farm. (A farmer in Isle of Wight County).

C. Landowner Doubts about Participating in Districts

Our interviews identified three kinds of doubts which farmland owners had about participating in districts. One was that not enough committed farmers could be found to form solid agricultural districts. The record of district formation since 1978 (see Table 1-2) suggests that this worry may be unfounded, at least in many parts of Virginia. The second doubt was that, by joining an agricultural district, farmers might not be able to sell their land, if financial necessity required them to do so. Actually, districting imposes no direct restrictions on when or to whom a sale may be made. However, the new owner must realize that for the duration of the district's term, he or she may encounter certain difficulties in developing the land for nonagricultural purposes. County or city authorities might not rezone for residential or commercial use land which they had specifically approved for a four-to-eight-year agricultural district, and the districting law enables them to veto projects which would extend sewer and water lines to such land (see the discussion above in Section IV D of this case study). Fauquier County, for example, will not likely grant zoning that permits division of districted land into parcels smaller than ten acres along public roads or 25 acres for land located elsewhere.<sup>38</sup>

In other words, districted status should pose no problems for selling land to persons who, for the foreseeable future, want to farm it or enjoy it as open space. However, buyers interested in its development potential might be discouraged, unless they bank on the district ending after the current term and their development plans permit waiting the four or so years until that term expires.

The third kind of doubt about entering districts which our interviews picked up was related to the second; it was a general concern that state and local government should not be involved in regulating land use. Some farmers reportedly believed that districting was a form of, or would lead to, land-use planning, which they opposed on principle, believing that landowners "should be free to use or abuse their land as they see fit."<sup>39</sup>

## VI. CONCLUDING THOUGHTS

Our research on agricultural and forestal districts in Virginia was carried out mostly in March 1980, less than two years after the first district had been formed. This was too early in the program's history for making even tentative judgments about its effectiveness. We can say that in several Virginia counties, significant numbers of landowners have committed rather large amounts of land to four-to-eight year districts (mostly eight-year; see Tables 1-2 and 1-3). In four of the 13 counties which had districts as of mid-September 1980, the total districted acreage covered the equivalent of 12 percent to almost 29 percent of the land found to be in farm use by the 1978 Census of Agriculture (we say "equivalent," because some lands in districts may consist of forest rather than agricultural land). For all 13 counties the average significance of districted land in terms of total county land in farms as of 1978 was 9 percent (see Table 1-2).

Our limited interviewing of landowners taking part in districts identified motivations for participation which seem capable of being widely shared and which, therefore, may portend considerably more growth in the number of districts and total amount of farmland covered: a desire to gain the protection against nuisance ordinances which districts promise, an interest in districting's assurance of retaining farm-value assessment if county or city government decides to discontinue it for general use, an intention to use the existence of a district and the political influence it represents to shape local government decisions on other issues affecting agriculture, and a belief that by committing land to districts farmers will help to preserve for their children and grandchildren the option of being in farming.



NOTES

1. J. Paxton Marshall, Virginia's Agricultural and Forestal District Act -- Some Questions and Answers (Blacksburg, Virginia: Extension Division, Cooperative Extension Service, Virginia Polytechnic Institute, 1979, M.B. 272), p. 2.
2. Va. Code, Sections 15.1-1506 to 15.1513 (Cumm. Supp. 1980).
3. N.Y. Agric. and Mkts. Law Section 300-309 (Supp. 1980).
4. J. Hiram Zigler, "Urban Land Use in Rural Areas: Conflicts and Suggestions", in Land-Use Issues: {Proceedings of a conference} (Blacksburg, Virginia: Extension Division, Virginia Polytechnic Institute, 1974, Virginia Water Resources Research Center Publication No. 629), pp. 79-80.
5. Ibid., p. 80.
6. National Agricultural Lands Study, "Agricultural Land Data Sheet: America's Land Base in 1977 -- 1000 Acres" (Washington, D.C., 1980).
7. Section 304 of the New York law. See the discussion of this section in Case Study No. 2. Among other points covered in that discussion is that, as of the end of 1980, Section 304 had never been used to create a district.
8. See Section 303 of the New York Law, and see also the discussion of this part of the law in Case Study No. 2.
9. See Section 15.1-1511 (A) of the Virginia statute.
10. Marshall, Some Questions and Answers, op. cit., p. 3.
11. Section 15.1-1510 of the Virginia districting law.
12. Ibid.
13. Ibid., Sections 15.1-1511 (C).
14. Ibid., Section 15.1-1508 (D).
15. Interview with that planner, March 1980.
16. Section 15.1-1511 (D) of the Virginia law.

17. Ibid., Section 15.1-1511 (E).
18. Marshall, Some Questions and Answers, op. cit., p. 12.
19. Ibid., p. 19.
20. Ibid.
21. See the text of the relevant Virginia statute in Code of Virginia, Title 58, Chapter 15. See also David B. Hull and J. Paxton Marshall, Procedures for Determining Ranges of Use Value For Agriculture, Horticulture, Forest and Open Space Land in Virginia with 1980 Suggested Use-Values (Richmond, Virginia: State Land Evaluation Advisory Committee, 1979).
22. Ibid., p. 65.
23. Marshall, Some Questions and Answers, op. cit., p. 15.
24. Ibid.
25. See Section 15.1-1512 (D) of the Virginia districting law.
26. Ibid.
27. Marshall, Some Questions and Answers, op. cit., p. 18.
28. Interview with a local government leader in that county, March 1980.
29. Marshall, Some Questions and Answers, op. cit., p. 18.
30. Ibid., p. 16.
31. Interview with J. Paxton Marshall, March 9, 1980, Charlottesville, Virginia.
32. Interviews with those two landowners, March 1980.
33. The data for March 18, 1980 were supplied by the Virginia Department of Agriculture and Consumer Services.
34. Interview with that farmer, March 1980.
35. Interview with that planner, March 1980.
36. Interview, March 1980.
37. Interviews, March 1980.



## 1. VIRGINIA

38. The ordinances establishing Fauquier's two districts as of September 1980 prohibited subdividing districted land into parcels smaller than these sizes.
39. Interview with an officer of the Virginia Farm Bureau Federation who specialized in districting issues, March 1980.

## Case Study No. 2

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AGRICULTURAL DISTRICTING IN NEW YORK STATE\*

by

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I. INTRODUCTION

A. Definition of "Agricultural Districting"

New York State pioneered in an approach to coping with the negative impacts of urbanization on farming, an approach called "agricultural districting". Its legislation authorizing the establishment of agricultural districts was passed in 1971,<sup>1</sup> while statutes based on the New York model were enacted in Virginia in 1977<sup>2</sup> and by Illinois in 1979.<sup>3</sup> Like an agricultural zoning approach, specific areas of land are demarcated for farm use. However, unlike zoning, agricultural districting as practiced in New York can not directly prevent the encroachment of nonfarm use into the demarcated area. It can only indirectly obstruct the conversion of farmland -- mainly by helping land-owners to decide to retain their land in farming. This help takes the form of statutory protections against problems caused by nearby urban growth. The authors of New York's 1971 districting legislation believed that the state's agricultural industry, "especially that in the wide commuting belts around urban areas, ...{was} jeopardized by urban growth".<sup>4</sup> After assessing the problems resulting from urban pressures, they designed into the 1971 bill six major protections for land enrolled in agricultural districts:

1. Problem condition: Development on, or purchase by speculators of, farmland tends to increase the market value of nearby land still being farmed. Higher market values often lead to higher real estate property tax assessments.

Protection: parcels enrolled in agricultural districts may qualify for real property tax assessments based on the land's agricultural use value rather than its fair market value.

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\* Assisting in the research for this case study was  
John J. Dearing



2. Problem: Nonfarm families living in developments adjacent to or near farms complain about farm-produced smells, dust, spray, and noise. They may also persuade local government authorities to enact and enforce nuisance ordinances against "excessive" smells, dust, etc.

Protection: "Local ordinances restricting or regulating farm structures or practices cannot be applied in an agricultural district. For example, manure spreading or night-time operations of machinery could not be prohibited or limited."<sup>5</sup>

3. Problem: Public agencies spend money or advance credits for the construction of sewer, water, and other facilities that stimulate urban development in agricultural areas.

Protection: Public agencies may not fund such facilities in an agricultural district without first identifying alternative locations for such projects that are outside any district and then demonstrating that the alternatives are unsuitable.

4. Problem: Public agencies acquire good farmland or cut up farms for highways, parks, sewage treatment plant sites, reservoirs, and other public facilities.

Protection: Public agencies may not acquire significant amounts of land within an agricultural district without identifying alternative locations and demonstrating that they are not suitable.

5. Problem: Public agencies decide to extend services -- water, sewer, non-agricultural drainage -- to developments located near farms. Where sewer and water lines or other improvements run along the edge of a farm or cut across it, the farmland owner is often assessed a portion of the improvement's costs, even though it is designed to serve only non-agricultural users.

## 5. (continued)

Protection: "Only  $\frac{1}{2}$  acre surrounding each non-farm structure within an agricultural district can be taxed by public service districts for sewer, water, electricity, or non-farm drainage."<sup>6</sup>

6. Problem: Where urbanization has started in, or is predicted for, an area, state agencies use their regulatory powers (e.g., regarding water pollution or use of public roads by farm vehicles) so as to favor nonfarm interests at the expense of agricultural interests.

Protection: State agencies are mandated to modify their administrative regulations and procedures so as to promote the viability of farming within agricultural districts.

With these protections, it was hoped that farming in urban-impacted areas would survive longer, perhaps indefinitely. However, the authors of the agricultural districts bill apparently had no illusions that districting's benefits would be strong enough to defeat many (or any) developers and speculators prepared to offer very high prices for land they wanted. Rather, those benefits were expected to have significant impacts on farmers who desired to stay in farming where they were and who did not face irresistible purchase offers. As one of the 1971 law's authors put it, "{Districts} help to facilitate the coexistence of farming and non-farming. They give farmers the options of continuing to farm if they want to. We'll make sure {through the districts} that they won't be taxed or regulated out of existence."<sup>7</sup>

To what extent have these protections promised in the 1971 statute been realized in practice, and with what effect for agriculture in New York? These are the two main questions which this case study addresses. Before introducing evaluative information to help answer them, we turn to a brief analysis of New York's agricultural industry and then to a description of how agricultural districts are formed in New York.

## B. Agriculture in New York State's Economy

Agriculture comprises an important component of New York's economy so that threats to its viability understandably concern state government policy makers. According to the "Preliminary



Report" on New York from the 1978 Census of Agriculture, the total market value products sold from farms in the state that year was about \$1.9 billion,<sup>8</sup> up from approximately \$1 billion in the late 1960s. Just over half (about 53 percent) of the 1978 total consisted of dairy products, while other major contributors to the nearly \$2 billion total were corn, potatoes, poultry, apples, and grapes.<sup>9</sup>

As Table 2-1 indicates, the amount of land in farms identified by the U.S. Department of Commerce's Agricultural Census fell steadily in the 1950s and 1960s and into the first part of the seventies. Although the preliminary 1978 figures show an increase over 1974, the change appears to be due largely if not entirely to different techniques of enumeration, i.e., the amount of farmland probably did not increase, but the accuracy of the census did, in the direction of covering acres which had not been included in previous censuses, but which nevertheless had been parts of farms in those earlier years.<sup>10</sup> Whatever happened between the 1974 and 1978 counts, the overall trend since 1954 had been downward, with over 5.5 million acres withdrawn from farming, 1954-74 (see Table 2-1). While much of the withdrawal resulted from landowners' decisions to abandon to weeds rural land no longer found to be profitable to farm, much also left agriculture because of conversion to residential, commercial, and other nonfarm uses. Particularly important in this conversion process was the extension of the suburbs out from New York City, Buffalo, and other cities.

In response to the evident loss of so much farmland and of the consequences of urban sprawl into farming regions (e.g., conflicts between farmers and nonfarm neighbors), then Governor Nelson Rockefeller established in 1966 a New York State Commission on the Preservation of Agricultural Land. Among the 16-member Commission's "basic objectives" were to "{d}efine geographically those areas deemed essential for preservation in agricultural use...{and to p}ropose measures for preservation of these areas for the production of food and fiber."<sup>11</sup> Among the preservation measures which the Commission proposed in its January 1968 report to Rockefeller was:<sup>12</sup>

Legislation should be considered that would provide for the creation by the State of Prime Agricultural Districts in which (a) procedures for the exercise of the right of eminent domain would be modified, (b) present-use taxation of farms would be permitted, and (c) local ordinances restricting farming activities would be prohibited.

Table 2-1

LAND IN FARMS, HARVESTED CROPLAND, AND NUMBER OF FARMS IN NEW YORK STATE  
ACCORDING TO THE CENSUSES OF AGRICULTURE, 1954-78

	1954	1959	1964	1969	1974	1978
Land in farms (ac.)	15,070,832	13,489,506	12,275,308,	10,148,359	9,410,706	9,916,837
Harvested cropland (ac.)	5,546,506	5,032,671	4,742,718	3,835,623	4,156,266	4,483,617
Number of farms	105,714	82,356	66,510	41,909	43,682	49,323

Source: U.S. Department of Commerce, Census of Agriculture, 1959, 1964  
1974, and the "Preliminary Report" for New York from the 1978 census.



This proposal became the basis for the state's Agricultural Districts Law, which passed the New York legislature in 1971 without a single dissenting vote<sup>13</sup> and whose approach to preserving farmland (i.e., providing protections against the consequences of urban pressures) is outlined above in Section IA of this case study report).

### II. STEPS IN THE FORMATION OF AGRICULTURAL DISTRICTS

The following discussion of how agricultural districts (ADs) are formed under New York State law relies heavily on a publication of the N.Y. Department of Environmental Conservation, How to Create an Agricultural District.<sup>14</sup> This brochure lays out six "basic steps" involved in forming an AD. These steps are depicted in summary form in Figure 2-A.

#### (1) Landowner(s) Develop and Submit an Application to County Government

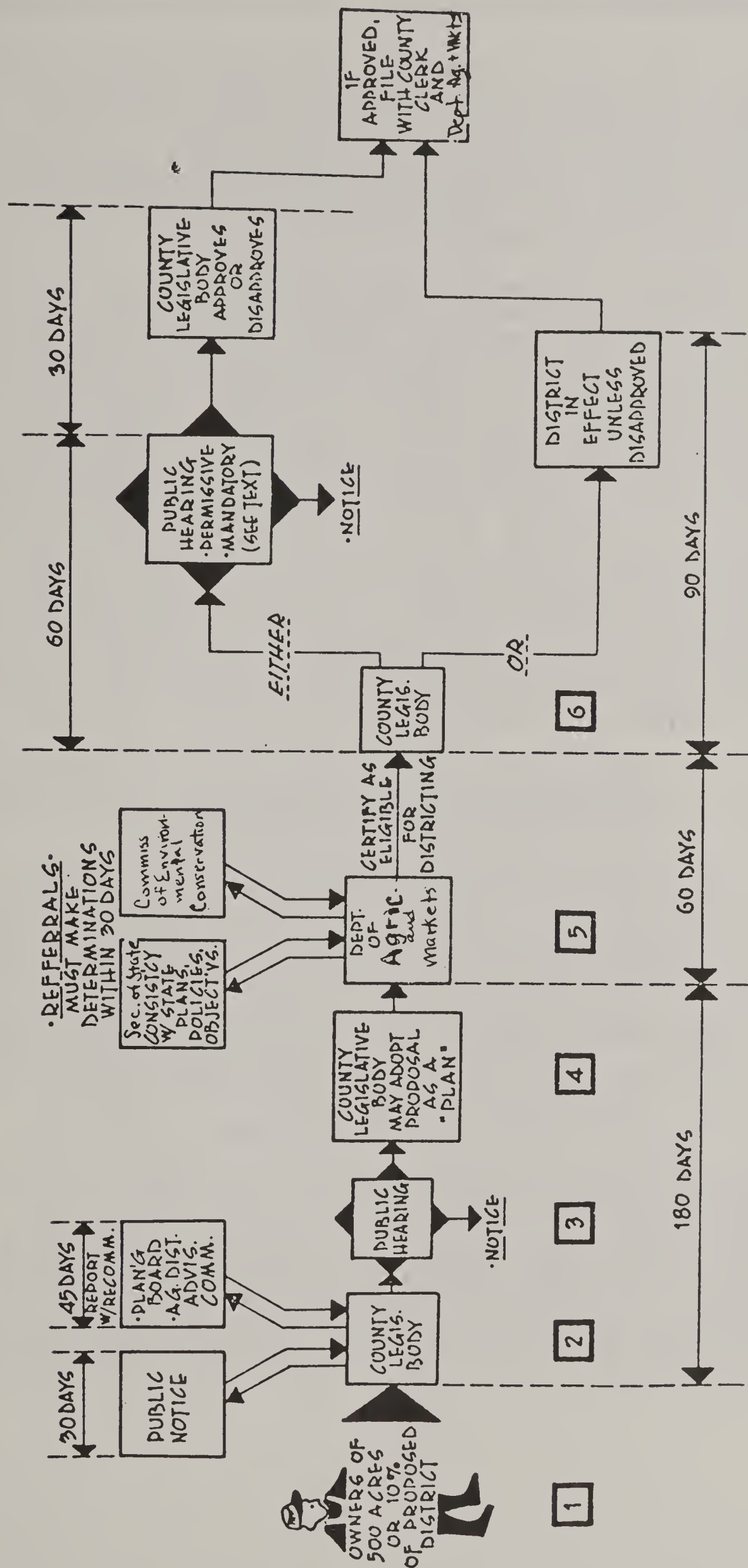
Applications for proposing an agricultural district are submitted to one's county government on a standardized form (which is reproduced in Appendix 2-A). That form contains the names, signatures, and addresses of the landowners proposing the district, and the amount of land they want to include in it. Attached to the application form should be maps showing the boundaries of the proposed district and of the applicants' individual properties. To be eligible for consideration, the landowners who sign the application must be willing to place in the district at least 500 acres of land they own; or the properties owned by them and to be included in the district must comprise at least 10 percent of that promised district's total acreage, whichever is larger.

In other words, to start the process of establishing a district, not all of the parcels proposed for inclusion need be among those owned by the people who submit the application for that district.

As of May 15, 1980, farmland owners in 49 of New York's 62 counties had organized to form ADs. At that time 411 districts had been fully approved, and they encompassed 5,974,679 acres on about 17,500 separate farms.<sup>15</sup> What has attracted New York farmland owners to forming these districts? In 1977, Donald White and Kenneth Gardner of Cornell University's Department of Agricultural Economics conducted a survey of a sample of 579 farmers in 17 New York counties, asking them, among other questions, "Can you recall what factors were most significant in your decision to participate or not to participate in the

Figure 2-A

## CREATION OF AGRICULTURAL DISTRICTS



Adapted from, N.Y.S. Department of Environmental Conservation, How To Create an Agricultural District (Albany, N.Y., 1974).

Agricultural Districts program?"<sup>16</sup> One third of those surveyed gave responses in words to the effect, "Keep down taxes, maintain ag-use value assessments." Thirty-one percent answered, "Prevent conversion of ag-land to non-farm uses." Eleven percent said, "Stick together with other farm neighbors"; and ten percent of the sample replied, "Prevent local restrictive ordinances, government regulations."

What kinds of landowners have provided leadership in the process of organizing farmers and non-farmer owners into proposing districts? Writing in 1975, Cornell University's William Bryant and Howard Conklin observed that district leaders were "typically younger men who wish{ed} to remain in farming for many years."<sup>17</sup> According to interviews conducted for this case study with farmer participants in agricultural districts in two New York counties, successful leaders in the formation process tended to be those already well known in the farming community, such as persons active in the county Farm Bureau, the school board, and town zoning authorities.<sup>18</sup> In one of those two counties, organizers of a district were aided by what was perceived to be a looming crisis. Farmers were alarmed by a proposal to construct a reservoir which would have flooded several hundred acres of valley farmland. New York's first agricultural district was formed in that part of the county, apparently largely in reaction to the proposed reservoir.<sup>19</sup>

(2) Referral by County Legislature to the Public, the County Planning Board, and the Agricultural Districting Advisory Committee.

After landowners propose to their county government the creation of an agricultural district, the County Clerk's office publishes a notice of the intended district and invites interested parties to submit proposals for modifying the district's boundaries. At this point, if parcels have been included in the proposed district without their owners' wishes and those owners oppose the inclusion, they can file formal objections. There are 30 days for modifications to be proposed. After that period, the proposed district is evaluated by the county's planning board and, also, by a special agricultural districting advisory committee. Each county government to which district proposals are submitted must form such an advisory committee and appoint to it "four active farmers and four agribusinessmen residing within the county and a member of the county legislative body, who shall serve as the chairman of the committee."<sup>20</sup> This committee is mandated to provide "expert advice" to county government on the desirability of creating a planned district, particularly "as to the nature of farming and farm resources within the proposed area and the relation of farming in such area to the county as a whole."<sup>21</sup>



(3) Public Hearing

The reports of the planning board and of the advisory committee must be submitted within 45 days after the close of the 30-day period of "public notice." (see figure 2-A) The next step is a public hearing held by the county legislative body. The owners of all the land proposed to be included in the district are invited by mail to react to the proposal, which they may do either in writing or orally at the hearing. The county is not obliged to honor owner requests for their land to be excluded from proposed districts. For the sake of establishing districts of sufficient size and contiguity to provide meaningful benefits (especially in buffering farm operations from nonfarm land uses), counties may approve districts which include parcels whose owners specifically asked to be omitted. We found an instance where such a request was denied in Schoharie County in 1974:<sup>22</sup>

The District as finally approved by the New York State Commission{er} of Environmental Conservation and the Board of Supervisors excludes only the Village of Sharon Springs...{and several publicly owned facilities, such as a landfill}. We are sorry that the wishes of the very few landowners like yourself {to be also excluded} could not be considered more favorably.

A planner from another county reported that his county legislature tended to reject requests to be excluded if the consequence would be a district looking like a piece of Swiss cheese, especially if the "holes" consisted of parcels located towards the district's center.<sup>23</sup> In such cases, if the excluded parcels became developed, they could undermine the viability of much of the district. Surrounded by districted land, they could cause trouble on all sides, e.g., their residents complaining about farm odors, dust, etc., and storm-water runoff from those subdivisions producing flooding of farm fields adjacent to them, among other potential difficulties.

(4) First Decision by the County

"After receiving the reports of the county planning board and the agricultural districting advisory committee, and after holding a public hearing on the proposal and any proposed modifications the county legislative body must: adopt the proposal as a plan, or adopt a modified proposal, or reject the proposal entirely."<sup>24</sup> One of these three decisions must be made within 180 days of the date the landowners submitted their application.

(5) Review and Certification by the Commissioner  
of Agriculture and Markets

If a county legislature adopts a plan for establishing a district, that plan is submitted to the Commissioner of the New York State Department of Agriculture and Markets. The Commissioner has 60 days in which to review the plan and to certify to the county legislature whether

...the proposal, or a modification of the proposal is eligible for districting, whether the area to be districted consists predominantly of viable agricultural land, and whether the plan of the proposed district is feasible, and will serve the public interest by assisting in maintaining a viable agricultural industry within the district and the state.<sup>25</sup>

The Commissioner is constrained by law not to certify a proposed district unless

(a) The commissioner of environmental conservation has determined that the area to be districted is consistent with state environmental plans, policies, and objectives, and

(b) the secretary of state has determined that the districting is consistent with state comprehensive plans, policies, and objectives.<sup>26</sup>

In effect, the Commissioner of Agriculture and Markets has the legal power to reject or require modifications in a county's plan for creating a district. Among the specific grounds on which rejection or modification might be based are that (1) the review by the Secretary of State finds that a state agency has plans to build a road or a park on land proposed for a district (therefore, the Commissioner of Agriculture and Markets might require that the affected parcels be excluded from the planned district), (2) the Commissioner of Environmental Conservation reports that a community intends to use land within the proposed district for a wildlife preserve and that the particular parcels would be suitable for such use, and (3) the Commissioner for Agriculture and Markets finds that land proposed for a district is not of sufficiently high agricultural productivity or that enough nonagricultural development has already occurred in and around the proposed districted area so that the long-term viability of farming in the area is in serious doubt.



(6) Final County Action

If the Commissioner of Agriculture and Markets certifies a county's plan for a district as submitted, the county legislature may hold another public hearing or simply let 90 days elapse, at which time the district goes into effect.<sup>27</sup> Approval can come any time earlier, if there is no hearing, by a positive vote of the legislature. When there is a hearing, the district automatically takes effect 30 days afterwards, unless the legislature votes to disapprove it. If, however, the Commissioner modified the district plan, there must be a public hearing; and for the modified district to go into effect, the county legislature must approve the changes within 30 days following that hearing. Any such hearing must be held within 60 days after the Commissioner issues the certification.

The legislature must review each district eight years after its creation and every eight years after that. Such reviews provide for information inputs from the same sources as contributed to the county's initial decision to approve a district plan and, also, for review of county action by the Commissioner of Agriculture and Markets, except where the county legislature votes to terminate a district.<sup>28</sup> It can end one on its own authority. The Commissioner of Agriculture and Markets enters the process when (1) the county legislature proposes to alter a district (let us say, by combining two or more districts into a larger, more viable one) and he must certify the change; (2) the Commissioner himself, proposes changes (with which the county must concur); (3) the Commissioner decides to recertify a district which the County voted to continue; or (4) he decides to terminate such a district, such as because it is found that "the district is no longer predominantly viable agricultural land" or that the district "is not consistent with state plans, policies, and objectives" or with "environmental plans, policies, and objectives."<sup>29</sup>

A provision of the Agricultural Districts Law, Section 304, permits the Commissioner also to create a certain kind of district without formal concurrence by local governing bodies:

{A}fter consulting with the advisory council on agriculture {and with officials and others at the local level, he} may create agricultural districts covering any land in units of two thousand or more acres not already districted ...if (a) the land encompassed in a proposed district is predominantly unique and irreplaceable agricultural land; (b) the commissioner of environmental conservation has determined that such district would further state environmental plans, policies and objectives; (c) the secretary



of state has determined that such proposed district would be consistent with state comprehensive plans, policies and objectives and (d) the director of the division of the budget has given approval of the establishment of such area.

The budget director's approval is sought because, under another provision of the law (Section 305.1 {e}), the state "shall provide assistance to each taxing jurisdiction in an amount equal to one-half of the tax loss that results from requests for agricultural value assessment" in such districts which the Commissioner of Agriculture and Markets creates on his own initiative under Section 304. However, as of the end of 1980, this procedure for establishing agricultural districts had never been used. All New York districts had been initiated at the local level.

### III. EFFECTIVENESS OF AGRICULTURAL DISTRICTS

The first agricultural districts in New York were formed in 1972, and as of mid-1980 more than 400 districts were in existence. What can be said about their effectiveness? We shall look at effectiveness in two ways: (a) to what extent have the protections for farming provided for in the 1971 Agricultural Districts Law been realized; and (b) and how (if at all) have such protections served to prevent the conversion of agricultural lands?

#### A. Protections for Farming in Agricultural Districts

##### 1. Protection from High Tax Assessments Based on Market Value

As discussed briefly in Section IA of this study, farmland in a district is eligible for assessment for real estate tax purposes on the basis of its value for farming rather than its possibly higher market value. Ordinarily, all real property (land, structures, and other improvements) is supposed to be assessed on the basis of 100 percent of its market value (Section 306 of the State Real Property Tax Law). But the Agricultural Districts Law (as amended in 1980) provides for farm-value assessment if the land meets certain requirements: it comprises ten or more acres, has been farmed for the preceding two years, and produces "an average gross sales value of ten thousand dollars or more" (Sec. 301.3 of the law).

If the land is rented, it must also be at least 10 acres and produce an average of \$10,000 per year, except, if that particular parcel does not yield the required level of sales, but the renting farmer has at least a five-year lease on it, he owns 10 or more other acres, he farms the rented parcel in conjunction with his other land, and together those parcels produce at least \$10,000 in sales on average per year, that particular parcel can qualify for use-value assessment. If the other land farmed in conjunction with the parcel in question is not in an agricultural district, the farmer must sign it up for an eight-year "commitment" to agricultural use.

Section 306 of the Agricultural Districts Law provides for use-value assessment of individual parcels which are outside districts, such as in cases where a farmer owns less than the 500-acre minimum for a district and cannot induce neighbor landowners to join with him to form a district. However, to encourage landowners to favor joining districts over individual commitments, the law provides for stiffer conditions if owners choose the latter path to lower tax assessments. They must every year file a written commitment "to use such land exclusively for agricultural production for the next succeeding eight years" (Sec. 306.1). No such obligation is assumed by owners of districted land. Moreover, if an owner decides to break that agreement, he or she is subject to a special conversion penalty "equal to two times the taxes determined in the year following the breach of commitment for all of the land previously under commitment" (Section 306.2). In other words, he/she might convert just a small part of the land under a commitment, but the penalty is assessed as if all the land were converted. In addition, all the land loses its eligibility for use-value assessment.

In contrast, if an owner of districted land decides to convert part of it, he/she is subject only to "roll-back taxes," which are calculated as the difference between what would have been his taxes without a use-value assessment and the amount of taxes he actually paid during the preceding years such assessment was enjoyed (up to a total of five years--see Section 305.1(d)). And this roll-back is levied only for the part of the districted land that is converted, not for all the land which enjoyed lower assessments.

To what extent have farmers with districted land benefited from use-value assessment? Out of the approximately 12,800 farms included in districts in 1977, only about 2,000 received agricultural-value assessment for that tax year.<sup>30</sup> For 1978, the last year for which data are available, the numbers of recipients rose to about 2,700.<sup>31</sup> In preparation of this case study, we telephoned in January 1981 a random sample of extension agents in 32 of the 49 New York counties which had



one or more fully approved agricultural districts as of May 15, 1980. A simple random sample of this relative size, 32 out of 49, provides for an error range of plus/minus 10 percent, with only a five percent chance that polling all 49 counties would yield findings that did not fall within that error range. We surveyed extension agents because we had time and money to reach only one person per county and we assumed that the agent would likely be that one person in each county who was best informed about the implementation of the Agricultural Districts Law in his/her county. Where there was more than one agency in a county, we asked to speak with the one who was responsible for land-use questions.

This survey asked the interviewed agents whether farmers in their counties had taken advantage of that part of the districting statute which allows them to apply for use-value assessment. Twenty-four of the 32 agents (or 75 percent -- see Table 2-2) replied that at least some farmers had, although eight of them reported that only "a few" or "not many" farmers were involved.

Why so relatively few? Eight of the interviewed extension agents commented on the limited use of this part of the Agricultural Districts Law; they attributed it to the situation that regular property tax assessments were low enough so that farmers figured they would benefit little or nothing from the bother of applying for use-value assessment. The already cited 1977 survey of farmers in 17 New York counties found that only 18 percent of the sample had applied for agricultural-value assessment and, of those who explained why they had not, most said that as of yet there was no need for it.<sup>32</sup>

Existing assessments were low either because local assessors had failed to increase them commensurate with rises in market values or because the farmland was in areas where market values were close to agricultural-use value, that is, the land lacked development potential. Perhaps it was too far from urban areas for residential development based on commuting; or it was not close enough to lakes, mountains, or other attractions for second-home development. As Table 2-3 shows, in April 1977 more than 95 percent of all districted acreage was located more than 10 miles from any large city (i.e., with a population of at least 50,000); and 65 percent was in excess of ten miles from incorporated places of at least 2,500 people (Table 2-4).



Table 2-2

SURVEY OF COOPERATIVE EXTENSION AGENTS IN 32 NEW YORK COUNTIES\*  
REGARDING BENEFITS OF AGRICULTURAL DISTRICTS LAW  
JANUARY 1981

<u>Kind of Benefit</u>	<u>Number of counties in which the type of benefit was identified as occurring at least in one instance</u>	<u>Percentage of total surveyed counties in which that benefit was so identified (total = 32)</u>
1. Protection from high real estate tax assessments based on market value	24	75.0%
2. Protection from "unreasonable" local government regulations	7	21.9%
3. Protection from acquisition of farmland within a district by the State, public benefit corporations, or local governments	9	28.1%
4. Protection from publically funded nonfarm development within districts	3 (possible cases)	9.4%
5. Protection from special assessments to pay for nonfarm-related public works	0	0
6. Protection from state agency regulations that interfere with farming	0	0
7. Enhancement of farmers' capacities to promote their interests collectively	9	28.1%

\*The 32 were picked, using a table of random numbers, from a total of 49 counties which had fully approved agricultural districts as of mid-May 1980. This telephone survey was carried out by John J. Dearing of the Center for Governmental Studies, Northern Illinois University.

Table 2-3

DISTRICTED LAND IN AGRICULTURAL DISTRICTS  
BY DISTANCE TO AN URBAN PLACE WITH A 1970 POPULATION  
OF 50,000 OR MORE, APRIL 1977

Distance	Districted Acreage	
	Acres (1,000)	Percentage
25 miles or less	1,047.5	23.7
(0- 5 miles)	(17.8)	(.4)
(6-10 miles)	(141.9)	(3.2)
(11-25 miles)	(887.7)	(20.1)
More than 25 miles	3,379.5	76.3
<hr/>		
Total	4,427.0	100.0

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Source: Northeast Regional Research Project 90, "Preserving Agriculture in an Urban Region," New York's Food and Life Sciences Bulletin, No. 86, 1980.

Table 2-4

DISTRICTED LAND BY DISTANCE TO INCORPORATED PLACES  
WITH A 1970 POPULATION OF 2,500 OR MORE, APRIL 1977

Distance	Districted Acreage	
	Acres (1,000)	Percentage
0- 5 miles	581.1	13.1%
6-10 miles	1,009.7	22.8%
11-25 miles	2,619.4	59.2
26 miles or more	216.8	4.9
Total	4,427.0	100.0

Source: Northeast Regional Research Project 90, "Preserving  
Agriculture in an Urban Region," New York's Food  
and Life Sciences Bulletin, No. 86, 1980.



Most of the farm parcels receiving agriculture-use assessments in 1977 were in counties containing urban areas or contiguous to them (e.g., Westchester, Rockland, Orange, Dutchess, Monroe).<sup>33</sup> Applications for differential assessment are expected to increase in such counties, as local assessors are compelled by court action and legislative mandate to cease the common practice of de facto preferential treatment of farmland. A landmark New York case in this respect was Hellerstein v. Assessor, Town of Islip (in Suffolk County).<sup>34</sup> The State's Court of Appeals, the highest in New York, held that state law required assessment at 100 percent of market value and mandated that the Town of Islip revalue all assessments to that standard by December 31, 1976. That precedent and pressures from local property owners not enjoying below-market-value assessments have caused revaluations in other areas. Typically, as farmland owners see higher assessments in the making, they move to forming districts, if none is not already in existence. This happened in Livingston County, where prior to the revaluation to full market value that took place in the spring of 1980 only about a quarter of the county's farmland was in districts; but afterwards, about two-thirds were districted.<sup>35</sup>

For those farmers receiving differential assessment under the New York districting program, how significant have the benefits been? And have they helped in deterring conversion of farmland? Only rough estimates are possible. We have a figure for the total amount by which farm parcels in districts had their assessments decreased because they qualified for agricultural value assessment in the 1977 tax year: \$140,262,000.<sup>36</sup> With the help of an officer of the N.Y. State Board of Equalization and Assessment, we estimated that (1) the number of districted farms which accounted for the \$140.3 million decrease was about 2,000 and (2) the tax rate which would have been applied to the \$140.3 million if it had not been deducted from those farms' assessments would have averaged \$37.50 per thousand dollars of assessed valuation.<sup>37</sup> On the basis of these figures, the average tax benefit per participating farm was \$2,631 ( $= \$140.3 \text{ million} \div 1,000 \text{ multiplied times } \$37.50 \text{ (the tax rate per } \$1,000) \text{ and then divided by } 2,000 \text{ (the estimated number of participating farms)}$ ). A study of New York's Orange County gives indications of what the benefit can be per acre. Reassessments that occurred there during the fall of 1974 "roughly doubled taxes on farmland,"<sup>38</sup> with the new tax bills averaging \$50 per acre. However, those farmland owners who were eligible and applied for agricultural value assessment were able to reduce their taxes back down to about \$25 per acre.<sup>39</sup>

Have such benefits contributed to keeping land from being converted out of agriculture? Available data indicate that they have helped to keep individual families in farming and, perhaps, indirectly to retain those families' land in farming. "Many farmers" in Orange County who were interviewed in 1975 testified that "they could not have survived with the high levels of taxes that would have been placed on them by the {1974} reassessment."<sup>40</sup> A New York State Farm Bureau officer with long experience with the agricultural districts program believed that other counties which had undergone upwards reassessment also had many farmers who would give the same testimony.<sup>41</sup> If they had been forced to sell their land, who would have bought it and what would the consequences have been for farmland retention? We assume that much, though not all, of that land would have passed to nonfarmer investors, many or most of whom would have concentrated on finding ways to develop the land rather than on improving its agricultural productivity. Whether they would have succeeded in developing is not clear, since in Orange and many other semi-rural counties growth rates fell during the late 1970s in response to higher commuting and house-building costs, among other factors.

## 2. Protection from Unreasonable Local Government Regulations

Districted farmland is exempt from local government ordinances or laws which "would unreasonably restrict farm structures or farming practices...unless such restrictions or regulations bear a direct relationship to the public health or safety "(Section 305.2 of the Agricultural Districts Law). Among the restrictions or regulations against which this provision of the law may protect are those which would limit or prohibit farmers from selling produce from roadside stands, spreading manure on their fields, and operating farm machinery late at night or early in the morning. For example, a farmer who supported the formation of an agricultural district in Schoharie County, New York, gave as one of his reasons that, in the New Jersey township where he used to live, a local ordinance prevented him from working in the fields before 8:00 AM or after 7:00 PM.<sup>42</sup>

To what extent has this kind of protection for farming operations been experienced by farmers in New York agricultural districts? To answer this question, we surveyed county agricultural extension agents from 32 of 49 New York counties which had districts as of mid-May 1980 (see the discussion of this survey in Section IIIA.1 above). Agents from about a fifth of the surveyed counties (seven out of 32) reported



specific instances in which, they believe, the districted status of land protected farmers from nuisance ordinances. Those agents described a total of eleven cases. Nine of them involved odors from the spreading of manure or other livestock-related operations, one concerned aerial sowing of rye grain, and the eleventh resulted from complaints about a grain drier that was operated late at night:<sup>43</sup>

#### Complaints about farm odors

The town government in one county was considering establishing a health code which would have restricted farmers' ability to spread manure. Farmers familiar with the protections of the Agricultural Districts Law lobbied successfully against such a proposal.

Roughly the same proposal was considered in a second county. However, when informed that the state's districting law protects normal farming operations, such as the spreading of manure on fields for fertilizer, the citizens who wanted the ordinance passed gave up.

A dairy farmer in a third county had been the subject of complaints to the county board about smells coming from his operations. But the agricultural district status has prevented that farmer from having to alter his operations.

In a fourth county, there were two instances of citizens complaining to their town board that a farmer's method of storing manure resulted in very noxious odors. However, these citizens did not obtain relief, because the town board said that it did not have a legal right to stop normal farming operations inside an agricultural district.

The agent for another county reported that nonfarm residents complained about the transportation and spreading of manure to two town boards. However, both boards said that their hands were tied, since the farms in question were located in agricultural districts.

Districted status helped also a chicken farmer in a sixth county (who was recycling manure into fertilizer) to fight a county Health Department which wanted to close him down because of the strong odors. And it helped to prevent a town board in a seventh county from closing or restricting a lagoon which collected animal wastes from a dairy operation.

#### Aerial sowing

A farmer sowed rye grain by airplane. Nearby residents complained that the seeds strayed onto their property and caused them to cough. The town board responded that



sowing by plane was a normal farming operation, and thus, was protected by the Agricultural Districts Law.

Late-night operation of farm machinery

Residents who complained about a farmer's grain drier because of late-night operation were also told by their county board that the farmer had the right to run the drier late because he was in an agricultural district.

While these eleven examples indicate that the protection afforded by districted status from nuisance complaints can be meaningful, why did not our survey identify more cases than only the eleven? Why did only about a fifth of the surveyed agents report cases? Eight of the other agents explained the absence of cases in their counties as simply the result of too little urban-type development which produces the kinds of conflicts that lead to nuisance complaints and ordinances.

3. Protection from Acquisition of Farmland  
within a District by State Agencies,  
Public Benefit Corporations, or Local  
Governments

Section 305.4 of the Agricultural Districts Law puts obstacles in the way of (but cannot prohibit) state agencies, public benefit corporation, or local governments which want to acquire (by eminent domain or other methods) more than ten acres from "any one actively operated farm" within a district or a total of 100 acres from any one district. The obstacles include requiring the agency intending to take that much land to "file a notice of intent {at least 30 days prior to acquiring the land} with the commissioner of agriculture and markets, containing such information and in such manner and form as he may require. Such notice of intent shall contain a report justifying the proposed action including an evaluation of alternatives which would not require action within the agricultural district" (Section 305.4{a}). In effect, the law requires agencies to pause long enough to examine alternatives to taking land from a district. In addition, it delays action, perhaps sufficiently long for the Commissioner of Agriculture and Markets or other interested parties, such as farmers within the affected district, to lobby against the proposed taking of land. They could lobby the potential taking agency, the Governor's office, and/or local or state legislators.

This delay-for-the-sake-of-better-decision-making can extend beyond the initial 30-day period of prior notice. The Commissioner of Agricultural and Markets has the right "to issue an order within such thirty day period to...{the potential taking agency} directing such agency...not to take action for an additional period of sixty days," if the Commissioner, upon analyzing the report submitted by that agency and other information

is not satisfied with the justifications contained in the report. During that second delaying period, 60 days, the Commissioner must hold a fact-finding public hearing on the proposed taking and develop a report from the findings in which he may argue against the taking project. Copies of his report go to the potential taking agency and to higher authorities with the power to review the action which that agency proposes.

To what extent have farmers benefited from this section of the Agricultural Districts Law, such as in protecting them from highway agencies which want to cut up their farms with new rights of way or state-regulated power companies which want to buy up large chunks of land for new generating facilities? Our survey of extension agents in 32 New York counties identified 11 instances in nine counties (28 percent of the total) in which, according to those agents' perceptions, farmland's status as being in an agricultural district helped either to defeat a proposed taking or to bring about design changes so that the taking would affect agriculture less negatively. Four of those cases involved highway projects which were planned wholly or in part for land in agricultural districts, another two concerned proposed recreational facilities, three other of the five cases dealt with corridors for power lines, and the last two were about sites for power plants:<sup>44</sup>

#### Highway Projects

The Transportation Department wanted to widen a road bed. Farmers in an agricultural district opposed the widening during the review process, and the project was stopped. While there may have been other influences in blocking the project, the extension agent felt that the agricultural district issue was an important one.

The agent for another county reported that this same issue helped to defeat plans for a highway that would have gone through part of an agricultural district.

In a third and fourth county, farmers in agricultural districts did not succeed in stopping projects altogether, but their efforts did help to achieve design improvements so that less farmland was negatively impacted: the placement of more of an expressway's right of way along property lines rather than on diagonals across farm parcels and the substitution, for the purposes of a new road crossing a creek, of a fairly wide bridge for an initially planned embankment with sluice pipes, so as to ensure better drainage of farmland up-stream from the crossing. (The sluice pipes could not carry as much water as the full creek bed).



Recreational Projects

A park project would have taken farmland along about a mile of a river's course, plus additional land for access points. The whole project was shelved, and the extension agent felt that the opposition on the grounds that agricultural district land would be affected contributed to the project's defeat.

Opposition on the same grounds helped stop a wetlands park project planned for another county.

Power facilities

According to extension agents whom we interviewed, the status of land being in agricultural districts helped in four cases of power-line siting to keep the corridors off of districted farmland. For example, in one case the power company's preference was to put a line through part of a district. However, when the company's engineers received word from the county planning office that this land was protected in an agricultural district, the company decided to utilize an alternative corridor.

In two power-plant siting cases, the agents felt that the main reason why power companies changed their minds on sites (from land within districts to parcels outside them) was that their first choices turned out to be districted land.

We studied in greater depth two of these eleven cases and another three (about which we learned from other New York sources) -- by visiting the particular counties and interviewing extension agents, farmer leaders, and others knowledgeable about the controversies affecting districted land. Two involved interstate highway projects, one was a wetlands-recreational project, another was a solid waste landfill project, and the fifth, a planned reservoir that would have flooded valley farmland.

Local farmland owners opposed all five projects, either to have them cancelled or -- in the two highway cases -- to achieve design changes which would reduce the negative effects on farming. In all cases opponents used the agricultural district status of threatened land as an issue. And in all five the proposed project was either shelved or redesigned in favor of protecting farming (i.e., the highways' right of way were modified to reduce the amounts of good farmland that were affected). While these policy changes cannot be attributed solely to the agricultural districts issue, we can make several observations:



First, landowners had an issue that commanded serious consideration because a state statute established the policy that land within agricultural districts could be acquired only after careful consideration of alternatives. In the landfill case, this protected status was enhanced by a regulation of the state's Department of Environmental Conservation that barred placing a landfill within a district where the land was being actively cropped, unless the Commissioner of Environmental Conservation granted a variance.<sup>45</sup> As a result of this provision and local landowner opposition, the county legislature decided to drop consideration of any site within a district.<sup>46</sup>

Second, landowners opposed to takings had sympathetic advocates in the lead agency and the Agricultural Resources Commission, an advisory body to which that agency referred for review proposed takings, among other matters. A county extension agent, who observed the defeat of one taking project, largely because farmers lobbied against it, believed: "Without the agricultural districts framework to work around and the support of the Agricultural Resources Commission..., it would have been pretty difficult for individual farmers to battle the thing."<sup>47</sup>

Third, the districts provided an associational basis from which to mount effective opposition to taking projects. Landowners within districts had the common conviction that districted land was entitled to special protection. The most effective political vehicle for district farmers to oppose takings may be an association of the members of the different districts within a county. Livingston County has had one, and the cooperative extension agent there reported:<sup>48</sup>

When something comes up that involves some kind of encroachment on an agricultural district, especially by public agencies, they {the Association} get on it....They are not at all afraid to call their Congressman or write the Governor or whoever happens to be appropriate. And over a period of time the different state agencies have gotten to the point that they respect the group.

Hard lobbying may not be necessary where agencies are already working with farmers to minimize the taking of good farmland and the negative impacts where land is converted. Local government officials in New York's Livingston and Schoharie counties reported that the highway division of the state's Department of Transportation had shown itself willing to consult with local groups and to make design changes accordingly.<sup>49</sup> A Livingston County official added, "The Agricultural Districts Law and the association {of districts in the county} provided the means and structure to negotiate effectively with DOT".<sup>50</sup>

The above analysis should not give the impression that district status guarantees protection from all public-agency takings. An official of New York's Department of Environmental Conservation, the main implementing agency 1971-80, reported two cases where conversion occurred despite land being in districts: a long power line corridor extending from the St. Lawrence River to near Utica and a sewer treatment facility in Oneida County.<sup>51</sup> In both cases the commissioner of the lead agency decided against holding hearings and, hence, delaying the projects. The Agricultural Districts law gives him that discretion. In one of two cases the cause of inaction may have been faulty data; the environmental impact assessment supplied to the Department appeared to have understated the amount of good farmland that would be taken. An officer of the Department believed: "We should have consulted with the county agent and the chairman of the Agricultural Districting Advisory Committee {to have verified the impact assessment}."<sup>52</sup>

#### 4. Protection from Publically Funded Nonfarm Development within Districts

New York's Agricultural Districts Law restrains state agencies, public benefit corporations, and local governments from making expenditures (e.g., grants, loans, interest subsidies) for "the construction of dwellings, commercial or industrial facilities, {or} water or sewer facilities to serve non-farm structures" within a district (Section 305.4{a}). This restriction invokes the same delay-for-the-sake-of-better-decision-making procedure as with plans for public agencies to acquire land within a district. The agency planning expenditures for one or more of the listed purposes must notify the Commissioner of Agriculture and Marketing at least 30 days prior to such action. Accompanying the notification must be "a report justifying the proposed action including an evaluation of alternatives which would not require action within the agricultural district" (Section 305.4{a}).



The Commissioner reviews the report and other materials so as to assess the likely impacts of the proposed expenditures on agriculture within the district or districts and, also, on other resources or values important to New York State (e.g., adequacy of waste water treatment, of housing for low-income families, and of electricity for residential and other uses). If the Commissioner finds that the proposed spending "might have an unreasonably adverse effect" upon such resources or values, he/she issues an order which restrains the public agency involved from making that expenditure for another 60 days. During that additional period of delay, the Commissioner holds a fact-finding public hearing on the planned expenditure and then reports his findings to the agency planning the expenditure and to any higher authorities which may review that agency's actions. In effect, the expenditures may be held up for a total of 90 days, during which time the findings of the Commissioner's initial assessment and subsequent public hearing, as well as inputs from other sources (farmers from the district, the Governor's office, a federal agency which might be a co-funder of the project), may influence the agency proposing the spending to drop or modify its plans.

This restriction may also help to discourage the owner of land within a district who is tempted to develop it. The Agricultural Districts Law does not prohibit him from doing so; all he needs is to meet his town or city government's zoning and other regulations. However, this restriction on public expenditure might mean that he could not obtain public sewer, and water services for his planned development. And without such amenities to attract property buyers and/or to permit a high density of development, he might decide to shelve the project or to shift it out of an agricultural district. Kenneth Gardner, an extension specialist at Cornell University, found from his long experience with New York districts: "Developers think twice before proposing development within agricultural districts because of the potential problems of getting funding packages approved."<sup>53</sup>

Our survey of cooperative extension agents in 32 of the 49 New York counties with agricultural districts (as of mid-May 1980) identified only three counties where the districted status of land may have protected it from nonfarm development-generating public expenditures. All three cases concerned sewer lines. In none of the three was the extension agent completely sure of a cause-and-effect relationship:<sup>54</sup>

In one county, the agent knew of four sewer lines which developed around agricultural districts, but did not enter them. He was not



positive if the sewer lines were kept out because they were not needed or because of the fact that an agricultural district existed, although he thought that the latter probably had an important role in preventing their extension.

The agent from a second county reported two cases where sewer lines were proposed to intrude upon agricultural districts. In one case the line was constructed; in the other, which was a much smaller line, it was stopped. The agent felt that the second case was largely influenced by the existence of an agricultural district.

In a third county, the extension agent reported that certain sewer district authorities had been reluctant to extend their lines into agricultural districts and that they had not done so as of the date of the interview (January 1981).

The absence of a greater number of cases may not indicate that the Agricultural Districts Law's protection against sewer and water lines and other nonfarm, public development projects is inadequate. Rather, the problem may simply be that, as noted by interviewed agents from four counties, the demand for new housing and other development was not strong enough to generate many projects to test this part of the Agricultural Districts Law.

##### 5. Protecting Districted Land from Special Assessments for Construction of Sewer, Water Lines, Public Lighting, Non-farm Drainage Facilities, or Solid Waste Disposal Projects

When sewer or water lines or street lights are installed, owners of adjacent farmland may be required to help pay for those investments, with the payments resulting from special tax assessments based on ad valorem, acreage, or front-foot basis. The levy is justified on the grounds that the sewer line or water main will increase the property's value for development purposes. However, if the owner prefers to keep the land in farming for the foreseeable future, he must still pay the assessment, even though the benefit is only hypothetical.

New York's Agricultural Districts Law protects participating landowners from special assessments by providing:<sup>55</sup>

Within improvement districts or areas deemed benefited by town improvements for sewer, water, lighting, non-farm drainage, solid waste disposal or other landfill operations, no benefit assessments or special ad valorem levies may be imposed on land used primarily for agricultural production with an agricultural district on the basis of frontage, acreage, or value, except a lot not exceeding one-half acre surrounding any dwelling or non-farm structure located on said land unless such benefit assessments or ad valorem levies were imposed prior to the formation of the agricultural district.

Unlike the law's provisions against public agencies acquiring land within a district or advancing grants, loans, or subsidies to promote nonfarm development, this protection against special assessments takes the form of an outright prohibition. Those other provisions serve only to delay and restrain action. Moreover, the fact that special levies cannot be imposed may serve to discourage the extension of sewer lines and other development-generating facilities into an agricultural district, because their prohibition against farmland in districts leaves fewer pieces of property to tax to pay for their extension.

However, our survey of extension agents in 32 counties failed to come up with a single instance where owners of districted land used this provision of the Agricultural Districts Law to avoid paying special assessments. One likely explanation is that much or most districted land is in undeveloped areas of New York, and that where development has occurred, it tends not to be at a density which requires public water, sewer, drainage and lighting facilities.

6. Protecting Farmers in Districts from State Agency Regulations that Interfere with Farming

New York's Agricultural District Law provides:<sup>56</sup>

It shall be the policy of all state agencies to encourage the maintenance of viable farming in agricultural districts and their administrative regulations and procedures shall be modified to this end insofar as is consistent with the promotion of public health and safety and with the provisions of any federal statutes, standards, criteria, rules, regulations, or policies, and any other requirements of federal agencies, including provisions applicable only to obtaining federal grants, loans or other funding.

Despite the several qualifications stated in that part of the law (e.g., consistency with public health standards and the requirements of federal funding agencies), this protection was expected to be useful to farmers in such regulatory areas as traffic control and water quality control. For example, where large farm machinery might be restricted in its access to a highway, such restrictions could be waived or softened if the machinery were used for farming in an agricultural district. In another example, a farmer would be permitted to take farm machinery across a stream which separates one of his fields from another, even though water pollution results, instead of forcing him either to travel a sizable distance to find an existing bridge or to bear the expense of building a new one strong enough to bear his heavy machinery.<sup>57</sup>

However, our survey of cooperative extension agents yielded not a single case in which this provision of the Agricultural Districts Law was used to change state regulations or procedures so as to benefit farming in districts. This finding is consistent with Kenneth Gardner's experience with districting. Stationed at Cornell University, he has been the chief extension specialist concerned with districting at the state level. He reported in a July 1980 speech: "This provision of the law has remained a 'sleeper' in that it has not been an important issue up to the present time."<sup>58</sup> Agreeing with him were two officers of the Department of Environmental Conservation, the state agency responsible for implementing the law from 1971 to 1980.<sup>59</sup> What may be needed is a greater commitment by the lead agency (now the Department of Agriculture and Markets) to sufficient staffing so that its people can work with other agencies in identifying regulations in need of modification and appropriate ways to change them. Throughout the 1970s, the lead agency for the Agricultural Districts Law committed the time of only one to two professionals to implementing the various elements of the law.<sup>60</sup>

#### 7. Participation in Agricultural Districts Enhances Farmer's Social Cohesiveness and Political Effectiveness

When we asked the cooperative extension agents in 32 counties whom we surveyed to identify and discuss other kinds of benefits to farmers besides the six covered just above, nine of them mentioned social-political by-products. The agents believe that, because farmers participated in organizing and sustaining districts, they tended to be better able to promote their interests vis-a-vis local and external authorities, such as town boards and state agencies:



In one county, according to the extension agent, the shared membership in an agricultural district helped to unify farmers in opposition to the plan of a public sanitation authority to dump sludge onto an area adjacent to farming.

In another county, the experience of working together to form districts promoted among the participating farmers a sense of common identity; and their banding together helped to make agriculture a more recognized, respected sector in the community.

An agent in a third county reported that agricultural districts have facilitated cooperation between farmers and the administrators of a state park, part of which has been farmed

Agents from six other counties identified similar effects: districting "encouraged farmers to work together"; gave farmers a "common, united ground" to minimize future pressures from non-farmers; provided the basis for a lobby to promote their various interests; facilitated interaction between farmers and other elements in the community; brought farmers together and forced the town "fathers" to give agriculture greater recognition; and strengthened "the farmer's voice in the community."

B. Summary Impact of Districting in Terms of Deterring the Conversion of Farmland

New York's Agricultural Districts Law provides indirect methods for preventing farmland conversion, that is, it aims to make farming of districted parcels more attractive and, thereby, discourage decisions by farmers that lead to conversion. Its restraints on spending public money on sewers, water lines, and other nonfarm amenities for land in districts, as well as its prohibition against taxing districted farmland to pay for such facilities, serves also to discourage development by likely making it less financially feasible.

Among the farmer decisions which the law may discourage would be that of discontinuing the ploughing back of current profits into the farming operations, because of doubts that future profits will justify the investment. The farmer may fear the effects of a property tax reassessment, a recently enacted anti-farm-nuisance ordinance, or some public construction project mooted for his area. If such problems become realities or the anticipation of them leads to disinvestment so that,

either way, profits do drop, the farmer may decide to put the land on the market or to seek approval for a subdivision plat for some part of the farm. If, on the other hand, being in a district gives the farmer protection from such problems, he may continue to reinvest and to forego sale or development opportunities.

To what extent has the package of protections offered by districting deterred decisions to disinvest, sell, or develop? The already-mentioned 1977 New York survey of farmers in 17 counties asked: "Has the Agricultural Districts program affected your investment and operating decisions in any way? How?" Ninety-three or 19 percent of the 491 who responded said, "Yes." Of that number, four farmers gave explanations in words to the effect, "Can now think about expansion"; 37 explained, "Enabled us to make land & building improvements"; and 40 replied, "Decided to stay in farming - more confident."<sup>62</sup> An extension agent from a southern New York county reported how the confidence factor has worked in his area: he found that agricultural districts, particularly the protection they offered from high property taxes, had contributed to an optimistic environment for farming, which in turn had led to increased investments in silos, farm buildings, tractors, and other equipment.<sup>63</sup> Another agent, from a county in central New York, stressed the districts' contribution to a sense of security from nuisance complaints: "If someone tells a farmer not to spread manure on his fields, he can say, 'Yes, I will; I'm in an agricultural district!'"<sup>64</sup>

These data indicate that districting can help to promote the viability of farming. However, the 1977 survey suggests that only a minority of participating farmers will testify to a positive impact on their investment and operating decisions. For many others, though, such an impact may be latent and would materialize if their areas came under development pressures.

Present and past leaders of the program at the state level have expected only modest levels of achievement:

Agricultural districts are not a preservation tool per se. They are not out to preserve agricultural forever. They are just trying to make it more feasible to remain in farming. {An officer of the N.Y. Department of Environmental Conservation} <sup>65</sup>

{Districts} help to facilitate the coexistence of farming and non-farming. They give farmers the option of continuing to farm if they want to.

We'll make sure that they won't be taxed or regulated out of existence. {One of the authors of the 1971 legislation}.<sup>66</sup>

We're not stopping a farmer from selling to a developer. But we are making farming more viable and are encouraging farmers to invest. {An officer of the New York Department of Agriculture and Markets}.<sup>67</sup>

As this last quotation indicates, leaders of the New York program have not expected that its package of incentives would be strong enough to deter most or many sales for development purposes, especially where the price was high and the farmer had strong reasons to sell out, e.g., he wanted to retire, he was burdened with illness, and/or no close relative wanted to continue operating the farm. On the other hand, if districting helped the farm to do well and a son or grandson stood ready to take over, moderate- and perhaps even some high-price offers to buy might be turned down. As a state Farm Bureau leader close to the program put it, "A developer may offer big money {for land in a district}, but we can hope that it's not taxes or government regulations that will force the farmer to sell."<sup>68</sup>

In summary, agricultural districting as an approach to preventing conversion of farmland has tended to do so in New York by contributing to the profitability of farming operations, to confidence that agriculture has a secure future in an area, and to farmers' capacities to organize to promote their interests collectively. Those contributions may encourage farmers to maintain needed investments and, thus, avoid or delay the day when sale or development of farmland appears required by financial needs. They may also encourage sons or grandchildren to commit themselves to taking over farms and, thus, avoid or postpone the day when selling or developing the land is dictated by the absence of heirs to farm it.



## NOTES

1. N.Y. Agric. & Mkts. Law, Sec. 305.1(e) (Supp. 1980).
2. Va. Code Secs. 15.1-1506 to 15.1-1513 (Cumm. Supp. 1980).
3. Ill. Stat. Ann. Ch. 120, Secs. 501(e), (f) (Smith-Hurd. Supp. 1979).
4. Howard E. Conklin, ed., "Preserving Agriculture in an Urban Region." New York's Food and Life Sciences Bulletin, (New York State College of Agriculture and Life Sciences, Cornell University), No. 86, 1980, p. 6.
5. New York State, Department of Environmental Conservation, "What Does an Agricultural District Mean to Me?" (1976).
6. Ibid.
7. Telephone interview with Howard E. Conklin, Cornell University, March 1980.
8. U.S. Department of Commerce, 1978 Agricultural Census, "Preliminary Report, New York" (1980).
9. Ibid.
10. Letter to Mr. James D. Riggle, Illinois Department of Agriculture from Arnold L. Bollenbacher, Bureau of the Census, U.S. Department of Commerce, December 3, 1980.
11. New York, Commission on the Preservation of Agricultural Land, Preserving Agricultural Land in New York State: A Report to Nelson A. Rockefeller, Governor of New York (Albany, N.Y., 1968), p. 1.
12. Ibid., p. 24.
13. W.R. Bryant and H.E. Conklin, "New Farmland Preservation Programs in New York," Journal of the American Institute of Planners, 41 (November 1975): 391.
14. Published in Albany, N.Y. in 1974 by the N.Y. State Department of Environmental Conservation.
15. N.Y. State Department of Agriculture and Markets, "Summary of Agricultural District Status, May 15, 1980"; and "Supplement...Agricultural Districts Information...June 15, 1980."

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16. Donald J. White and Kenneth V. Gardner, New York's Agricultural Districts Program: An Analysis of Farmers Perceptions in 17 Counties (Ithaca, N.Y.: Department of Agricultural Economics, Cornell University, Agric. Econs. Ext., 78-15, 1977), p. 11.
17. Bryant and Conklin, op. cit., p. 391.
18. Interviews in Livingston and Schoharie counties, June 1980.
19. Conklin "Preserving Agriculture in an Urban Region," op. cit., p. 9.
20. Sec. 302.1 of N.Y. Agric. & Mkts. Law (Supp. 1980).
21. Ibid., Sec. 302.2
22. Letter to Mrs. Marie Kerensky from the Clerk, Board of Supervisors of Schoharie County, October 7, 1974.
23. Interview with that planner, May 1980.
24. New York State Department of Environmental Conservation, How to Create an Agricultural District: A Guide to Interested Landowners (Albany, N.Y., 1974), p. 4.
25. Sec. 303.5. of N.Y. Agric. & Mkts. (Supp. 1980).
26. Ibid.
27. Another hearing is mandated, however, if the county legislature had modified the plan after the initial public hearing, and if those changes were not discussed at that hearing.
28. This discussion of the review process is based on the publication, Agricultural Districts Review Manual, issued by New York State's Agricultural Resources Commission (now defunct) in August 1979.
29. Ibid., p. 18.
30. For the 1977 tax year, 4,053 tax parcels within agricultural districts were approved for agricultural-value assessment, and for the 1978 tax year the number was 5,536. "Tax parcels" and "farms" are not the same things. On the advice of an officer of the New York State Board of Equalization and Assessment, we are assuming that the agricultural districts farms which receive use-value assessment have averaged two tax parcels per farm. The parcel numbers vary greatly from farm to farm, but an average of two per farm was recommended to us.

Consequently, if there were 4,053 parcels in the 1977 tax year, there would have been about 2,027 farms that year taxed on the basis of agricultural value. Source: interviews with two officers of the N.Y. State Board of Equalization and Assessment, November 1980.

31. Ibid.
32. White and Gardner, op. cit., p. 15.
33. State of New York, Temporary State Commission on the Real Property Tax, Report (Albany, N.Y., 1980), p. 31.
34. Matter of Hellerstein v. Assessor, Town of Islip, 37 N.Y. 2d. 1, 1975.
35. Interview with an official of that county, October 1980.
36. Temporary State Commission on the Real Property Tax, Report, op. cit., p. 31.
37. Interview with that officer. See also the explanation in endnote 30 above.
38. Howard E. Conklin and William G. Leshner, "Farm-value Assessments as a Means of Promoting Efficient Farming in Urban Fringes," The Appraisal Journal, 46(October 1978): 544.
39. Ibid.
40. Ibid.
41. Interview with that Farm Bureau officer, October 1980.
42. Minutes, Hearing on the Cobleskill Agricultural District, Schoharie County, N.Y., June 19, 1972.
43. From the notes on phone conversations with surveyed New York county cooperative extension agents, January 1981.
44. Ibid.
45. Interview with a member of the planning staff of the county in which the landfill project was to have been located, May 1980.
46. Interview with a member of the legislature of that county, May 1980.
47. Interview with that extension agent, May 1980.



48. Interview, May 1980.
49. Interviews, May and June 1980.
50. Interview, May 1980.
51. Interview, October 1980.
52. Ibid.
53. Kenneth V. Gardner, "New York's Agricultural Districts-- A Compromise Approach towards Preserving Farming," in Governor's Conference on the Preservation of Agricultural Lands, issued by the Illinois Institute of Natural Resources (Chicago, Illinois, 1980). p. 98.
54. From notes on phone conversations with surveyed New York county cooperative extension agents, January 1981.
55. Section 305.5 of the N.Y. Agric. and Mkts. Law (Supp. 1980).
56. Ibid., Section 305.3.
57. This example was suggested in an interview with one of the authors of the 1971 Agricultural Districts Law, July 1977.
58. Gardner, op. cit., p. 98.
59. Interviews with those two officers, June 1980.
60. Ibid.
61. From the notes of phone conversations with surveyed N.Y. county cooperative extension agents, January 1981.
62. White and Gardner, op. cit., p. 21.
63. Interview with that extension agent, May 1980.
64. Interview with that agent, October 1980.
65. Interview, June 1980.
66. Telephone interview with Howard E. Conklin, Cornell University, Ithaca, N.Y., March 1980.
67. Interview, October 1980.
68. Interview, October 1980.

PROPOSAL FOR THE CREATION OF AN AGRICULTURAL DISTRICT

**SECTION A - TO BE COMPLETED BY APPLICANT** Three (3) copies of this form (including required maps), or such reasonable number as the county legislature body may require, are to be submitted by eligible landowners to the county legislative body.

**1. GENERAL LOCATION OF PROPOSED DISTRICT** (Village, City, Town, County)

**2. Attach to each copy of this form the map(s) showing the boundaries of the proposed district and the boundaries of the properties within the district owned by the undersigned applicants.** Sources of these maps are listed in the booklet, "How to Create an Agricultural District", available from your local Cooperative Extension agent.

**Boundaries of the district and boundaries of properties owned by the applicants are to be clearly marked and easily distinguishable from each other. Properties owned by each of the applicants must be identified on the map.** In addition, the county legislative body may also require the use of town or county property (tax) maps to record the boundaries of the proposed district and the boundaries of properties owned by the applicants, if such maps are available.

Maps used are the U.S. Geological Survey 7.5 Minute Quadrangle (Topographic) maps.

3. SUMMARY OF ACREAGES:		4. NAMES & ADDRESSES OF LANDOWNERS PROPOSING THE DISTRICT (See below)	
a. Estimated total acreage in proposed district	b. Acreage owned by persons proposing district	c. Percentage of proposed district acreage owned by persons requesting district	

**SECTION B - TO BE COMPLETED BY THE COUNTY** Date submitted to county legislative body

Date of county legislative action

☐ APPROVED ☐ MODIFIED ☐ REJECTED

SECTION A - Item 4 (See above): Print or Type LANDOWNER'S NAME	SIGNATURE	ADDRESS (Legal Residence)	TOTAL ACREAGE OWNED IN PROPOSED DISTRICT
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APPENDIX 2-A





## II. AGRICULTURAL ZONING



## Case Study No. 3

### LARGE LOT AGRICULTURAL ZONING IN STANISLAUS COUNTY, CALIFORNIA

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LARGE LOT AGRICULTURAL ZONING  
IN STANISLAUS COUNTY, CALIFORNIA

by

J. Dixon Esseks

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I. INTRODUCTION — THE SETTING

California's Stanislaus County has climatic, water-availability, and land-surface conditions highly conducive both to agriculture and to urban development. The Mediterranean-type climate found in that part of central California provides for a long growing season and mild winters. The snow and rain which fall on the nearby Sierra Nevada Mountains yield a normally abundant supply of water for irrigating crops (and also for urban uses). The well-drained alluvial soils found in the broad valley-area of the County support both row and tree crops (as well as being convenient locations for urban-type construction). The hills to the west and east of the valley (of the San Joaquin River) support a large livestock industry. In recent years close to 80 percent of Stanislaus' total land surface (which is 1.521 square miles) has been devoted to agriculture.<sup>1</sup>

In 1978 the County's 12 leading farm products were milk, chickens, eggs, cattle and calves, almonds, walnuts, peaches, grapes, dry beans, apricots, tomatoes, and silage.<sup>2</sup> Livestock and poultry accounted for more than half of total agricultural income, which in 1978 was \$562.1 million.<sup>3</sup> In 1974 Stanislaus ranked sixth in California in the value of agricultural products.<sup>4</sup>

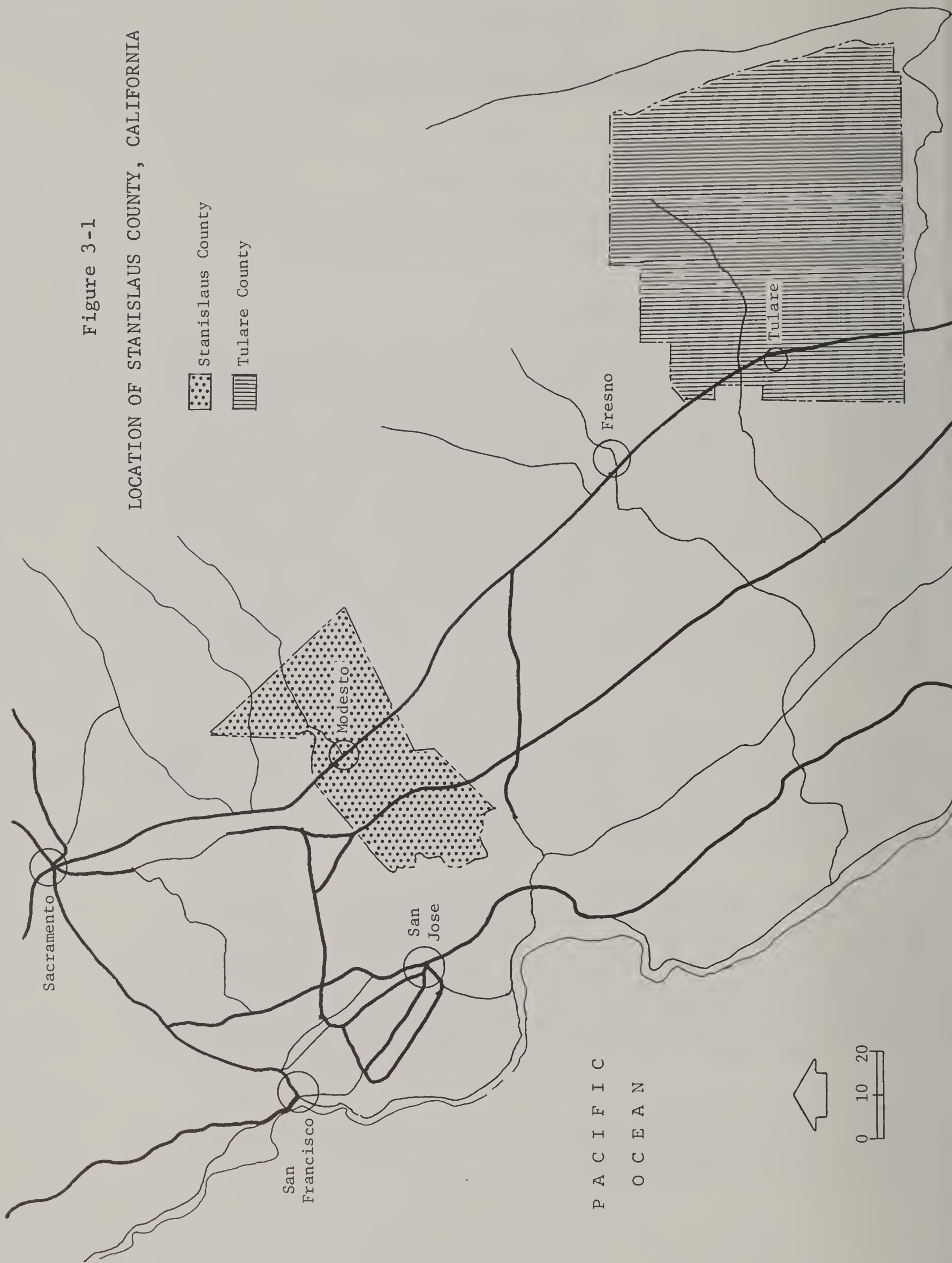
This large agricultural sector employed in 1978 an estimated 11,500 persons in direct production and about another 2,000 in services to agriculture.<sup>5</sup> Industries in the County which manufactured "Food & Kindred Products" employed that year approximately 12,100;<sup>6</sup> and many of their raw materials (especially for canneries) were locally grown. Together these three categories of employees accounted for about 27 percent of all wage-and salary-earners in 1978.<sup>7</sup>

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\* Most of the field research for this study was carried out by Robert B. McCallister.

Figure 3-1

LOCATION OF STANISLAUS COUNTY, CALIFORNIA





Self-employed farmers totalled about 3,500 to 4,000 additional persons, <sup>8</sup> so that over-all agriculture-related employment reached close to 30,000 in a county whose total population in 1978 was estimated at 241,600. <sup>9</sup>

The rapid growth of that total population, however, threatened Stanislaus' agricultural sector. Between 1960 and 1970 the County's population grew by 23.7 percent, and another 24 percent was estimated to have been added between just 1970 and 1978.<sup>10</sup> In contrast, the state as a whole grew in the 1970-78 period by only about 12 percent.<sup>11</sup> A study of adults who newly settled in Stanislaus, 1975-77, found that 18 percent were from out of state, 19 percent came from the San Francisco Bay area, another 19 percent from southern California counties (11 percent from the Los Angeles area), and the remaining 44 percent were from central and northern counties.<sup>12</sup> The median age of the surveyed "in-migrants" was 30.4, suggesting that most were of working age, moved for improved employment opportunities, and would be raising families in Stanislaus.<sup>13</sup> In the ten calendar years 1969 to 1978, the County's main city, Modesto, added an average of 1,734 new dwelling units per year, with the peak years being 1976 and 1977, when 2,362 and 3,271 units were built, respectively.<sup>14</sup> Between 1970 and 1979 Modesto grew about 60 percent, from 61,712 to over 99,000, while the county's second largest city, Turlock, increased in population 64 percent to about 23,000 and the third largest, Ceres, grew by an estimated 82 percent to about 11,000.<sup>15</sup>

What were the consequences of this rapid urbanization on Stanislaus' agricultural sector? Most of that urban development occurred on prime agricultural land, i.e., Class I and II as defined and mapped by USDA's Soil Conservation Service. The area consisting of Modesto and nearby Ceres has mostly Class I and II land, with only small stretches of III. About 22,000 acres in this Modesto-Ceres area are classified as prime.<sup>16</sup> Between 1968 and 1979 Modesto annexed 8,642 acres and Ceres, 1,422.<sup>17</sup> Of course, annexed land may not be urbanized in the short run, but eventually most of it will be.

Considerable development occurred also outside the County's municipalities. The population of the unincorporated areas grew by 62 percent, 1960-70, to 94,335,<sup>18</sup> with some new homes being built in subdivisions and others located on scattered "ranchettes" of three or more acres carved out of farms, usually with adjacent land continuing to be farmed. This juxtaposition of residential and agricultural uses led to frequent conflict, more so in Stanislaus than, let us say in Corn Belt areas, because of Stanislaus' irrigated orchard

### 3. STANISLAUS COUNTY

and vinyard farming. Subdivision youngsters played along irrigation ditches, opening pipe valves, and otherwise disturbing operations. The regular spraying required by tree crops tended to mean unwelcome chemicals straying onto the yards of adjacent non-farm families.

The growing market for ranchette-type properties tended to drive up the cost of farmland, whether for residential or agricultural use, so that farmers seeking to add to their holdings faced a steep escalation in the prices they had to pay. By August 1971 the Stanislaus County Farm Bureau went on record advocating that

Urban growth should be limited or controlled to avoid infringing on prime agricultural land. Consideration should be given to higher population density and control through limiting service areas....Stanislaus County should NOT become the Santa Clara of 1980! <sup>19</sup>

A once important agricultural county, Santa Clara had by 1970 become a metropolitan area or more than one million people, with most of its prime land already urbanized or apparently destined for that change. Stanislaus has a total of only about 190,000 acres of prime land,<sup>20</sup> and as with Santa Clara most of it is situated in the path of urbanization.

## II. POLICY RESPONSES TO URBAN SPRAWL

### A. The Policies

From 1971 to 1976 the Government of Stanislaus County took a series of steps to protect the County's agricultural sector from urbanization. By 1976 these steps amounted to the following protective conditions:

(1) Approximately 90 percent of all land in the County was zoned in a classification, "A-2 Exclusive Agricultural District," which severely limited non-agricultural uses.

(a) Subdivisions, i.e., the "division of land into five (5) or more lots," were prohibited in A-2 districts.<sup>21</sup>

(b) An A-2 parcel could be divided into two to four pieces but only once during any five-year period, regardless of changes in ownership, and only after a formal



finding by the County Planning Commission that the proposed parcels were "designed for agricultural purposes and.... {would} not materially decrease the ability to use said property or other property within the vicinity for agricultural purposes."<sup>22</sup>

(c) Industrial and commercial uses in A-2 districts were to be limited to those serving agriculture (such as weighing, loading, and grading stations; crop dusting services; grain-storage warehouses) and required County approval on a parcel-by-parcel basis.

(2) The rezoning of land from A-2 to industrial or commercial classifications was to be restricted to (a) General-Plan-designated "Planned Development" districts, which were relatively few in number and small in size, scattered along major highways and around cities, and to (b) a few industrial areas demarcated by the Plan adjoining to or near cities.

(3) Rezoning of A-2 land to residential use was expected to be limited to "Rural Residential" and "Residential" areas designated by the General Plan. As of August 1976 the Plan showed only two significant "Rural Residential" areas, located to the north and northeast of the City of Oakdale on land adjacent to existing rural residences and whose soils tended to be Class III or worse. County zoning officials explained in interviews that the Rural Residential classification was designed to serve the market for "country living" in ways to minimize adverse impacts on agriculture, that is, by concentrating the further development of ranchettes in one, relatively unfertile part of the County. The minimum building lot size for this zone was set at three acres. The Plan provided for one significant-size "Residential" area for new development, east of Oakdale on poor soils for farming, plus some growth areas around existing unincorporated settlements. The minimum lots size in these areas varied from 6,000 square feet to an acre, depending on the availability of public sewer and water services.

(4) Subdivision-type residential development was to occur predominately in "Urban Transition" areas demarcated by the Plan (a relatively small amount could occur also in the Plan's "Residential" areas if central sewer and water was available). Urban Transition areas were defined as "those areas between the existing incorporated limits of a city, community service district or special utility district and the projected limits of the ultimate service area of such jurisdiction...."<sup>23</sup> Modesto and the other eight incorporated communities decide on their own long-range or "ultimate"



### 3. STANISLAUS COUNTY

service boundaries, while for the six unincorporated settlements the County drew those boundaries. Commercial and industrial development could also occur within the Urban Transition areas. However, as with residential projects, they had to be annexed by the adjacent city, community service district, or special utility district. The County, itself, would not give the appropriate zoning. Its policy was that either the adjacent jurisdiction annexed the land in question or there would be no development; urban-type development belonged in urban jurisdictions.

Such a policy required, of course, the cooperation of those jurisdictions. The County's major city, Modesto adopted in March 1974 an "Urban Growth Policy" which, among other norms, included a pledge to cooperate with the County and the objective of keeping urban development "as contiguous as possible in order to avoid premature urbanization of valuable farm land, foster resident convenience and provide for economy in City service."<sup>24</sup>

#### B. History of Policy Development

Prior to 1971 the predominant zoning district in Stanislaus County was "A-1 Unclassified," whose permitted uses included agricultural and all those allowed in each of the ordinance's residential and commercial districts "except auto wrecking yards and junk yards."<sup>25</sup> How did the County Government move from that laissez-faire environment to the set of substantial zoning constraints discussed at the beginning of this section of the report? The change was in stages and made possible by, among other factors, (a) an innovative, effective-with-the-public Planning Department leadership; (b) two state statutory mandates; (c) support-generating work by the County Farm Bureau and the Agricultural Extension Service; and (d) the willingness of County and City of Modesto officials to depart from a tradition of rivalry to cooperate in drafting and politically selling growth management policies.

The then Director of the County Planning Department, Martin Schueller, spoke to groups of farmers about the dangers of A-1 zoning and the virtues of including their land in an exclusive agricultural district. He had an ally in the Secretary-Manager of the Stanislaus County Farm Bureau, who helped to arrange the meetings and supported Schueller's message that the urban sprawl which A-1 zoning permitted threatened to undermine their farming operations (such as from conflicts with non-farmer neighbors), their rural life-styles, and the political weight of their votes in school board and other local elections.<sup>26</sup> One farmer leader who

heard Schueller speak on these issues remembered him warn that A-1 would allow an auto race track to be located next to his ranch.<sup>27</sup> That farmer subsequently helped to organize his neighbors into petitioning the County to zone a 12-square-mile area "A-2 Exclusive Agriculture."

Until 1971 the Board of Supervisor shifted farmland from A-1 to A-2 zoning only when the farmers, themselves, asked for the protection of the A-2 district. From 1955, when the zoning ordinance was amended to include an exclusive agricultural zone, through 1970, A-2 zoning slowly spread. Then in 1970 the state legislature amended the Williamson Act (the California Land Conservation Act of 1965) to require that, in order to receive the real estate tax benefits the Act authorized (i.e., use value assessment), land eligible to be enrolled under the Act had to be protected by zoning. The Act provided for landowners to enter into ten-year contracts with their county governments, whereby in exchange for keeping their land in farming or other open-space uses, they were assessed at the property's use value rather than on the basis of its current market value.<sup>28</sup>

The attorney for Stanislaus County (the County Counsel) interpreted this 1970 amendment to the Williamson Act to mean that land eligible to be enrolled needed A-2 Exclusive Agricultural zoning. A-1 Unclassified would not suffice because of its inclusiveness; the only protection offered was against a few "obnoxious" uses (junk and wrecking yards).<sup>29</sup> Thereafter, the County insisted that landowners seeking Williamson Act contracts accept A-2 zoning. As interest in the Act's tax benefits increased, A-2 zoning spread more quickly than in the years before 1970. Moreover, as A-2 became the dominant form of zoning in rural areas, the County was faced with the problem of many pockets of A-1 land amidst A-2 zoning, with the pockets resulting from one or a few owners being unwilling to join neighbors who petitioned for A-2. In 1971 the County Board of Supervisors, for the sake of reducing the opportunities for land-use conflicts which such pockets presented, began to zone the pockets A-2.

By June 1972 over 450,000 acres of land were under Williamson Act contracts; and A-2 zoning covered more than 740,000 acres or 76 percent of the total land in the County.<sup>30</sup> However, about 147,000 acres remained outside of A-2 zones. Most of that acreage was prime agricultural lands on the fringes of Modesto, Ceres, Turlock, and other urban areas along major roads. Their owners resisted A-2 zoning and the Williamson Act so as to be free to develop or to sell out



### 3. STANISLAUS COUNTY

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to developers when the opportunity arose. But included in their land was about half of the prime farmland left in the County!<sup>31</sup>

On March 23, 1973 the Board of Supervisors adopted an interim ordinance which restricted all A-1 land to uses permitted in A-2 districts and which limited the building lots in A-1 land to a ten-acre minimum. Exceptions could be had only through special permits. The ordinance provided also that the Planning Commission would proceed to hearings for the purpose of rezoning all A-1 land. Those hearings were held beginning in November 1973 and continued until May 1975, with the County being divided into ten planning areas, separate hearings focusing on each of the ten, general plan and zoning amendments for every area being considered simultaneously, and the process of plan and zoning changes completed in 1975. However, during the interim, A-1 zoning was formally replaced by A-2 (in September 1973), so that land would be protected pending the outcomes of the projected hearings and consequent plan and zoning changes.

These steps to eliminate the laissez-faire A-1 zoning met strong political opposition. An analysis of how County officials overcame that opposition may be instructive to other local government leaders contemplating the use of restrictive zoning to protect land that is prime both for farming and for urban development. The principal organized opposition in Stanislaus came from a group calling itself "Stanislaus Today and Tomorrow" (STAT) and claiming to represent "all organized A-1 landowners."<sup>32</sup> Minutes of the County Planning Commission meetings indicate that STAT's chairman and/or Vice Chairman spoke against A-2 zoning at nine Commission meetings held in 1973.

The arguments of STAT members and sympathizers made during these meetings included five major themes, which are illustrated below along with rebuttals given by County Planning Department members and others:<sup>33</sup>

<u>Attack on Exclusive Agricultural Zoning</u>	<u>Rebuttal (where one is given)</u>
1. "Because it is not as flexible, <u>A-2-10 zoned land is only about one-half as valuable as A-1 zoned land....</u> "	"{E}stablishment of incompatible uses on A-1 land {racing track, drive-in movie} also affects land value of adjacent properties."



Attack on Exclusive  
Agricultural Zoning

2. Because of restrictions on residential building in the County, "the land values inside the City {Modesto} would rise in price

3. "Mr. Lopes said he had developed a trucking business on the property he had purchased 7½ years ago, at which time he was assured by the County Planning Commission that his was a legal business under the existing zone and that it would not be changed.... {Under A-2=10} he would not be able to expand his {non-conforming} business."

4. Mr. Wolf's manufacturing business "had outgrown the plant on Kansas (Avenue) and he wanted to build a larger plant, but if the A-1 zoning is eliminated on his property {22 acres he had already bought}, he cannot continue with his plans."

5. Mr. Miller said that "his life was in his land and it was his pension plan. If the market for his products is depressed as it has been with peaches for the last few years, he wanted to be able to sell off an acre or two to survive."

(Emphases were added.)

Rebuttal [where one  
is given]

"{T}here is room for 400,000 people within the 20-year sanitary sewer service area at the current population densities."

The Planning Commission was considering ordinance amendments to permit "Under some conditions" the expansion of "those uses which are made nonconforming by rezoning from A-1" and the reconstruction of them if destroyed by fire or other causes.

No rebuttal

"Jim De Martini {a young farmer} spoke in favor of the agricultural zoning to protect the farmers from encroachment of nonfarm uses. He felt that a farmer must either stick out the bad years or sell out and quit farming, not sell off an acre or two each year."

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As indicated by the illustrative quotations in the right-hand column above, none of the rebuttals was conclusive. Some or many people were going to end up with property worth less than it was before the change from A-1 zoning (and, if they had bought the property recently, the lower value might even be less than they had paid for the land). Strict controls on residential development on county land might well contribute, by limiting the supply of buildable land, to increased prices for city lots. The ordinance to permit expansion or reconstruction of non-conforming uses was only under consideration. There were lots of Mr. Wolfs with plans to develop A-1 land they already held, but plans which A-2 zoning would likely frustrate. If there were not such development plans, changing to more restrictive zoning would have no urgency. The Mr. Millers were also numerous; and, as the last quotation in the left-hand column suggests, they could attract considerable sympathy. The proposed 10-acre minimum for the A-2 districts that would replace most of the A-1 meant that farmers could expect to sell only in ten-acre or larger parcels. At that time (1973) offerings of 10 or more acres tended to attract mostly other farmers as buyers, and they tended not to offer as high prices per acre as non-farmers seeking smaller acreages for ranchettes.

The smaller the parcel being offered for sale, usually the easier and more profitable the sale. At the Planning Commission's April 26th meeting (1973), two Commission members moved that the areas proposed for A-2-10 be designated A-2-5 (i.e., a five-acre minimum for splitting off parcels for sale). This amendment was voted down two in favor and five against.

The supporters of A-2-10 zoning had at least three advantages over their rivals. In the first place, while their opponents argued largely in terms of the supposed or likely evils of A-2 districting, the advocates of the zoning change could point to actual evils which had resulted from A-1's permissiveness. A frequently mentioned example was the McHenry Avenue Twin Drive-in Theater, which was built in an area that County and Modesto planners expected to develop residentially. Since the land was zoned A-1, they could not block the theatre's construction and resulting late-night traffic, bright lights, and other traits incompatible with nearby residential living. Moreover, the drive-in had been built on land which the city's general plan had designated for a collector street.

Because of this and other examples where uncontrolled developments in the County thwarted city plans, Modesto officials worked with the County to eliminate A-1 zoning,



This city-county cooperation was a second important advantage for the proponents of change. In September 1972 both the County Board of Supervisors and the Modesto City Council directed "their Planning Commissions to study and make recommendations concerning the unincorporated area within the Modesto 20-year Sanitary Sewer Service Area which has a large amount of A-1 Unclassified zoning".<sup>34</sup> A joint City-County A-1 Study Committee was formed; and by February 1973 it recommended A-2-10 Exclusive Agriculture zoning for the land between the then current sewer service area and the City's 20-year sewer boundary and, also, single-family residential zoning for the land between the current area's boundary and the city limits. The Board of Supervisors adopted these recommendations in an interim ordinance passed February 20th. Remaining to be decided was rezoning for the A-1 land outside the 20-year sewer service area. Joint meetings of the City and County Planning Commissions were held March 13th and 22nd, and at them the City Planning Director (William Nichols) joined with County planning staff in vigorous defenses of A-2-10 zoning against numerous attacks by STAT members and other opponents.

A third advantage held by A-2-10 proponents was a State of California mandate, enacted in 1972, that zoning had to conform to a jurisdiction's general plan. The County's chief legal officer interpreted this mandate to invalidate A-1 Unclassified, because such permissive zoning could not be consistent with any land-use designation put down in a general plan. <sup>35</sup> The County's Plan showed the land located outside 20-year sewer boundaries to be for agricultural use, so that supporters of A-2 zoning could "pass the buck" to the state: "Don't blame us; the State is making us do it." One strong supporter, the Secretary-Manager of the Stanislaus County Farm Bureau, had the opinion that without this state mandate, "nobody would have done anything." <sup>36</sup> As it was, the March 1973 interim ordinance (discussed above) passed by the bare margin of three to two.

We interviewed two of the three Supervisors who voted for this ordinance and its imposition of A-2-10 restrictions on most of then zoned A-1 land. One of them, a farmer, gave the following reasons for supporting the ordinance and the follow-up changes in the general plan and in zoning: <sup>37</sup>

With the county's broad agricultural base {many different crops}, we aren't affected to a great degree by down turn in the economy. If we lose the agriculture, I'm sure we'll experience greater down turn in our local economy. In order to maintain our area's good stable economy, we need to make decisions now on how we can use our ag. land ....



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Economically, we need to preserve the best producing soils--Class I and II. Yet 90 percent of our growth is on Class I and II soils. We've already used one third of this Class I and II land. People say don't worry about it -- you go down the valley and there's a lot of land. But as agriculture leaves the area, the canning industry leaves the area. If we act now we'll maintain our stability and higher standard of living over the long haul.

The second interviewed Supervisor who supported the ordinance explained his position as follows:<sup>38</sup>

My reasoning behind that was to prevent nonagricultural uses from spreading to the agricultural area... to the detriment of the farm community....I was concerned about a proliferation of machine shops, garages, warehouses. About the farmers who can't spray because there are residences next to their fields.

In basing their positions on concerns for protecting the County's agricultural sector, both Supervisors were on strong ground politically. As discussed at the start of this report, agriculture-- both in producing farm products and in processing them -- employed more than a quarter of the County's salaried and wage-earners. The agricultural establishment, including the Extension Service and the Farm Bureau, supported the zoning changes. One of the interviewed Supervisors recalled that both of these organizations were "strongly in favor," as were "a majority of the farmers, themselves."

If County officials were opposed to growth in farming areas, where was it to go? They chose in 1973 a policy of diverting most new development to cities, themselves, or to belts of land around municipalities. These belts were designated "Urban Transition" areas; and their physical space was defined as the land between the cities' current corporate limits and the boundaries of the sewer service areas they expected to add over the following 20 years. The County's stated preference was for new residential, commercial, and industrial development to annex to a city.<sup>39</sup> This locational preference made sense in terms of both protecting farmland and providing such development with adequate services. Several of the interviewed County officers made the point that the County was not capable of supplying urban-type services, such as rapidly responding police assistance and frequent street maintenance.

Annexation was to take place within the General-Plan-designated Urban Transition areas and to be contiguous to the city or community service district. This policy was adopted by the County Planning Commission on June 21, 1973. Modesto was the first urban area to which the policy was formally applied. On January 8, 1974 the County Board of Supervisors approved the Modesto Area General Plan, which designated an Urban Transition area and, in the words of a Modesto Bee editorial, gave the city "the means to control the pace and quality of its own growth and ... {took} the county out of the business of trying to provide what are essentially urban services."<sup>40</sup>

The primary promoter of the urban-transition-zone policy was a new Director of the County Planning Department, Robert Davis, who assumed his office in May 1973. According to two Department colleagues who worked with him on developing and selling his policy, Davis was particularly effective because he had served in a city planning position in Santa Clara County. That neighboring county's urban sprawl at the expense of good farmland was a negative model which Davis understood well and could use convincingly when arguing the dangers of county and cities not cooperating to manage growth. Moreover, having been a city planner, he could work well with officials of Modesto and other cities.

A non-city problem which Davis had to face was what to do about frequent splits of A-2 zoned land into ten-acre parcels. The "A-2 Exclusive Agricultural" zoning which covered more than 90 percent of the County had a variety of minimum parcel sizes for the creation of legal new parcels and for the right to a building permit which that parcel creation entailed. In hilly areas on the west side of the County, ranchers had accepted a 160-acre minimum. Elsewhere 20, 25, 40 and higher acreages were designated on the zoning map as required for a new parcel. However, in the A-2 areas near the cities which were rezoned 1973-75 out of A-1 Unclassified, a ten-acre minimum predominated. When asked why ten acres were chosen, two knowledgeable interview sources, the Planning Commission Chairman for 1973-74 and a Supervisor of that period, gave essentially the same response: they knew that ten acres were too small for viable farming units, they had sought a higher minimum, but they had to compromise on ten in the face of realtor and landowner preference for A-2-1 or A-2-5 and/or staunch defense of A-1 Unclassified. Still, they hoped that the cost of ten acres would deter selling the land for ranchettes or hobby farms.



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By 1975 whatever deterrent effect there was had proved to be inadequate. The County was seeing ten-acre subdivisions developing! The appeals of "country living" were strong enough and the prices of large city lots had climbed high enough for ten-acre homesites to be marketable. Planning Director Davis warned in an October 1975 memo to the Board of Supervisors that many of the people newly settling in Stanislaus were coming from "areas where land costs far exceed those found here" (such as from the San Francisco Bay area).<sup>41</sup> Davis recommended that the "10" component of A-2-10 zoning no longer be regarded as a license to parcelize, but that instead the County approve division of A-2-10 land only upon a finding by the Planning Commission that the parcel split under review "would not diminish the agricultural productivity of the land covered by such parcel map or act detrimentally to the continued utilization of adjacent properties" for agriculture.<sup>42</sup> The Board enacted this recommendation as an amendment to the Zoning Ordinance (see paragraph 1b in Section II of this study).

One Supervisor supported this potentially very restrictive redefinition of A-2-10 because of his conviction that ten-acre parcelization tended to undermine the County's agriculture.<sup>43</sup> Another Supervisor approved the change because of its promise to introduce "objective criteria" into the Board's review of proposed parcelizations:<sup>44</sup>

Shortly after I arrived {on the Board}... we were getting a large number of parcel splits, a tremendous number. It seemed to me that we were flying by the seat of our pants. We had no criteria established. ...We were saying {in effect}, "I don't like your splitting of the land, or I do like it because you happen to be in my district."

### III. IMPLEMENTATION: REGULATION OR PARCEL SPLITTING

This analysis and the following tables focus on the kind of split most relevant to agriculture, that which was proposed for A-2 land outside urban Transition Areas. The County has largely ignored the agricultural implications of splits inside areas. Within an Urban Transition area the Zoning Ordinance permits one division every 24 months "provided that both parcels are demonstrated to be consistent with the potential subdivision of the total property as well as any approved city zoning and development plans...for the area in question."<sup>45</sup> County policy has



been for parcel divisions proposed within Urban Transition Areas to be sent to the relevant city or town for review.

An A-2 zoned parcel outside Urban Transition areas can, as discussed above, be split into two to four parcels but only once every five years and only after a "finding" by the County Planning Commission that the split is "designed for agricultural purposes" and will not significantly inhibit farming either on the land in question or on adjoining parcels. When the Commission makes a positive finding, the applicant is granted a split. The Board of Supervisors reviews Commission decisions on splits only in the event of a negative finding and a formal appeal within ten days by the applicant or other person dissatisfied with the decision.

#### A. Decisions by the Planning Commission

Table 3-1 suggest that the Planning Commission was fairly strict in judging parcel split applications during the period under review, July 1977 through December 1979. The Commission denied just about two-thirds of the applications (65.2 percent--see line 2 of Table 3-1). In fifteen of the 24 cases in which the Commission approved splits, it appeared to follow the recommendations of the Planning Department staff (line 3 A). These recommendations were based on the staff's findings that either an agricultural purpose would be served by the split (e.g., farmer A is having difficulty with doing both dairying and row-cropping and wants to sever off the cropland and sell it to farmer B) or the split would not be detrimental to agriculture (e.g., the land in question is poor for farming; or the parcels proposed to be created will be large enough for viable farming).

Where the staff did not make such a finding,<sup>46</sup> the Commission in almost all cases denied the split (i.e., in at least 40 of 45 denials, for about an 89 percent agreement between the staff and Commission on denials — see Table 3-2). Where the staff's finding was positive, the Commission's decision was generally positive (i.e., in 15 of 24 cases, for an 63 percent degree of agreement--see Table 3-2).

On the chance that the relationship suggested in Table 3-2 might be spurious (i.e., decision-makers were not significantly guided by the findings regarding the agricultural implications of splits), we interviewed Planning Commission members about their decisional criteria. We spoke with three of the eight members who served during the period under review, July 1977 to December 1979, asking

Table 3-1  
 PLANNING COMMISSION DECISION-MAKING  
 ON PARCEL SPLITS PROPOSED FOR LAND DESIGNATED  
 "AGRICULTURE" IN THE GENERAL PLAN  
 July 1977 Through December 1979

	Approvals		Denials	
	Number	%	Number	%
1. Total Cases	24		45	
2. Percentage of total cases (N=69)		34.8%		65.2%
3. Arguments for parcelization				
A. Cases in which the Planning Commission's decision agreed with the Planning Department's recommendation to the Commission.	15	62.5%	40	88.9%
B. Cases in which the Planning Department staff presented an "agricultural justification" for the split. <sup>a</sup>	15	62.5%	3	6.7%
C. Cases in which the applicant claimed a "hardship justification" for the split. <sup>b</sup>	2	8.3%	18	40.0%
D. Cases in which the applicant contended that members of his/her immediate family (parents, siblings, children) would build homes on, or at least own, the land rather than it being sold to outsiders.	3	12.5%	9	20.0%

Table 3-1 (continued)

	Approvals		Denials	
	Number	%	Number	%
4. Average number of parcels to be created, parcel size, and "compatibility" with surrounding parcels.				
A. Average number of parcels to be created per split.	2.2		2.3	
B. Average size of parcels proposed to be created (in acres)	55.7		23.6	
C. Average size of smallest parcel to be created per split (in acres)	26.5		13.7	
D. Cases in which the smallest proposed parcel would be ten acres.	2	8.3%	15	33.3%
E. Cases in which the smallest parcel would be at least 20 acres.	16	66.7%	7	15.6%
F. Cases in which the smallest parcel would be equal to or greater than at least two of the existing surrounding parcels, as listed in the staff report on each case.	15	62.5%	32	71.1%



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Sources: Department of Planning and Community Development Stanislaus County, staff reports on each petition for approval of a "parcel map" (i.e., parcel division into two to four pieces).

Notes: <sup>a</sup>The land is not good for farming (i.e., soil is of poor quality, insufficiency of irrigated water). The split will be for agricultural purposes (e.g., sever unproductive land from farmed land; sell off one operation, let's say a dairy, so as to be able to do a better job farming with another). The split will not be detrimental to agriculture (e.g., the parcels to be created will all be large enough for viable farming).

<sup>b</sup>Too old to farm all the land; have not worked for years. Farming is difficult because of the breakdown in parcel size in the vicinity. Want to retire and sell part of the land, while keeping homesite and perhaps some land to farm. Can't find a buyer for the whole parcel. Will divorce and must split up the land.

<sup>c</sup>Does not include one-to-three acre splits created at the same time under a separate provision of the zoning ordinance, subsection f(2) of Sec. 9-112, which permits one-time only splits to persons who owned A-1 (Unclassified) land at the time it was rezoned to A-2.

Table 3-2

PLANNING COMMISSION DECISIONS AND  
STAFF FINDINGS ON AGRICULTURAL IMPLICATIONS: PARCEL SPLITS  
July 1977 Through Dec. 1979

	Planning Commission Decides to	
	Approve	Deny
Staff finds agricultural justification for split.	15 (62.5%)	3 ( 6.7%)
Staff fails to find such a justification.	<u>9</u> (37.5%)	<u>40</u> (88.9%)
Total	24	43*

Source: Planning Department staff reports and Planning Commission minutes, Stanislaus County, Modesto, California

\* Data were missing for the staff recommendations on two of the denials. Percentages in this column were based on a total of 45.

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the question: "When deciding on a split, what criteria do you use?"<sup>47</sup> All three responded spontaneously (i.e., without being "led" or offered a fixed choice of criteria) that the impact on agriculture was important if not foremost:

- Number one: Is it going to hurt agriculture?
- Soils, parcel size in the area. And the reason he wants the split. If he says he wants to make money, that does not rate high. If he convinces me it's for an agricultural reason, I'll go along.
- It depends on the purpose for the application. The only one the Planning Commission can justify is if the split is for agricultural reasons, not for dividing up the land for children or for estate planning.

Two of the interviewed Planning Commissioners gave examples of agriculturally justified parcel splits:

- If the person has 30 or 40 acres in almonds and 10 in chicken houses. He wants to go either with the chickens or the almonds. A split would be OK.
- Let's say you've got a high piece of ground and a low piece, and someone wants to buy the low one and put it to more intensive {agricultural} use. You can encourage greater agricultural use in some of these splits.

A related criterion mentioned by all three was parcel size. The larger the ones proposed to be created, the more likely they were to be approved. However, where land in the vicinity of the proposed split has already been divided into small parcels, one Commissioner believed that further parcelization would likely not have an adverse impact on agriculture, and "we'd go against a staff recommendation" to deny. Data in section 4 of Table 3-1 suggest that parcel size was in fact an important criterion during the period under review. In the approved cases, the proposed parcels averaged more than 20 acres larger than those in the denied petitions to split (see Table 3-1's line 4B). Similarly, among the 24 that were approved, the smallest of the two to four parcels to be created averaged about 13 acres larger



than among the 45 which were turned down (line 4c). In a third of the denied cases, the smallest parcel was ten acres, the legal minimum for A-2-10 zoning, as compared to only 8 percent of the approved cases (line 4D). And two-thirds of the approvals had 20 acres or more as their smallest, while only 16 percent of the denials started at the level (line 4E). However, both groups of splits were relatively equal in terms of the criterion of compatibility of the proposed splits with surrounding parcel sizes, at least according to the standard of compatibility used in Table 3-1 (that the smallest proposed parcel is equal to or greater in size than at least two existing parcels which surround the land in question--see line 4F).

Table 3-1 suggest that "hardship" and "family interest" arguments did not weigh heavily in Planning Commission decisions on splits, 1977-79. We coded the staff reports which the Planning Department prepared on all splits for Planning Commission meetings, looking for, among other kinds of information likely to influence decisions, (a) staff findings as to an agricultural justification for the split, (b) an applicant's claim of special hardship if the split were not granted (e.g., too old or sick to be responsible for farming all the land; want to retire and need the money; a divorce and have to divide the property); and (c) a petitioner's efforts to enlist sympathy by contending the split is for family reasons (e.g., sell land to son or daughter; two brothers want to live next to each other). There were 20 cases in which hardship arguments were made, but in 18 of them the Commission voted to deny the splits (see Table 3-1's line 3C). Similarly, of the 12 cases in which family reasons were given to justify splits, the Commission denied nine of them (line 3D).

The best indicator of Planning Commission decisions was the staff's finding as to an agricultural justification for the split. As Table 3-2 shows, there was a positive finding for 15 of the 24 petitions which the Commission approved and for only 3 of the 43 denials (we found staff recommendations for 43 of 45 denials). What about the nine approvals for which no agricultural justification was reported? One of those nine involved a proposed split of 316 acres into two parcels of 43 and 270. None of the 45 denials had as its smallest proposed parcel one as large as 43 acres. It seems likely that the 43/270 split was approved because of the relatively large sizes of both parts of the division and of the related assumption that both could sustain viable farming.

Eight or one-third of the 24 approvals remains to be explained. Additional evidence as to an agricultural justification may have been introduced at the Commission meetings; we could not determine that from the minutes available to us. On the other hand, even if extraneous considerations ("hardship" arguments, favor-trading among Commissioners) did determine decisions in these eight cases and in the three denials where the staff had reported an agricultural justification, a total of 11 "bad" decisions out of 69 may be considered a comparatively good record. Many, if not most zoning authorities find it difficult to be consistent with their ordinances. Stanislaus County's Planning Commission approved only 35 percent of the proposed parcel divisions (July 1977 to December 1979). Two-thirds of the approvals had as their smallest parcel ones which were at least twice as large (20 acres) as the legal minimum for the zoning district (10 acres). And in almost two-thirds of the cases, there was the finding, required by the ordinance, that the split would serve or at least not hinder agriculture (see Table 3-1).

#### B. Decisions by the Board of Supervisors

The decision record of the Stanislaus County Board of Supervisors is not as good. Parcel division questions reached the Board on appeal. As Table 3-3 indicates, we found record of 33 appeals on which the Board ruled, July 1977 through December 1979. In more than half of the cases, 18 (or 54.5 percent), the Board reversed the Planning Commission's decision to deny. What were its reasons for overruling the Commission? Table 3-3 suggests two kinds of rationales: (1) the Commission was wrong; there was an "agricultural justification" (e.g., soil was poor; the parcel lacked access to sufficient irrigated water); and (2) the applicant would suffer undue hardship if denied the split.

Twelve of the Planning Commission reports which accompanied the appeals to the Board contained agricultural justification arguments: 11 presented by the applicant and one included as a finding by the Commission (see Table 3-3's line 3A). The Board approved nine of the 12 (line 3A), but were these justifications important to its member's decisions on appeals? We interviewed four of the five Supervisors who served in the period under review, July 1977 to the end of 1979, asking among other questions, about the criteria they used in judging appeals on Planning Commission rulings on splits.<sup>48</sup> All four spontaneously mentioned agricultural impacts as being among the issues

Table 3-3

BOARD OF SUPERVISORS DECISION-MAKING  
ON PARCEL SPLITS PROPOSED FOR LAND DESIGNATED  
"AGRICULTURE" IN THE GENERAL PLAN

July 1977 Through December 1979

	<u>Approvals</u>		<u>Denials</u>	
	Number	%	Number	%
1. Total Cases	18		15	
2. Percentage of total cases (N=33)		54.5%		45.5%
3. Arguments for parcelization				
A. Cases in which the applicant or the Planning Commission presented an "agricultural justification" for the split. <sup>a</sup>	9	50.0%	3	20.0%
B. Cases in which the applicant claimed a "hardship justification" for the split. <sup>b</sup>	7	38.9%	5	33.3%
C. Cases in which the applicant contended that members of his/her immediate family (parents, siblings, children) would build homes on, or at least own, the land rather than it being sold to outsiders.	5	27.8%	6	40.0%



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Table 3-3 (continued)

	<u>Approvals</u>		<u>Denials</u>	
	Number	%	Number	%
4. Average number of parcels to be created, parcel size, and "compatibility" with surrounding parcels.				
A. Average number of parcels to be created per split.	2.3		2.3	
B. Average size of parcels proposed to be created (in acres).	29.0		19.4	
C. Average size of smallest parcel to be created per split (in acres).	13.4		14.7	
D. Cases in which the smallest proposed parcel would be ten acres.	8	44.4%	8	53.3%
E. Cases in which the smallest parcel would be at least 20 acres.	2	11.1%	2	13.3%
F. Cases in which the smallest parcel would be equal to or greater than at least two of the existing surrounding parcels, as listed in the staff report on each case.	11	61.1%	9	60.0%

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Sources and notes: same as for Table 3-1

they considered, but they differed considerably as to the kinds of impacts they weighed and how they assessed them. One Supervisor was concerned primarily that the resulting parcels be viable for farming; and he stated that viability required, among other conditions, adequate irrigation and parcel size. However, a second member of the Board believed that judging the adequacy of proposed splits for agriculture was "almost an ethereal kind of thing":

Members of the Board of Supervisors and Planning Commission who are farmers tell me that one can't earn a living off of less than 10 acres. They tell me now it's 20 acres, because of inflation. Yet at the same time you'll have people who work in town and live on 10 acres of land with producing almond trees which'll provide them with supplemental incomes of \$10,000 per year, selling to local almond buyers. So how do you know {what's large enough}?  
(Second Supervisor)

Another Supervisor was also unconvinced that considerations of agricultural viability limited splits to 20-acres or higher minima:

I think that someone with small acreage who has some beef on it is contributing to his own economy, and he's using the land for the purpose it was intended for; it's grazing land. If he can raise some beef on it, whether for a 4-H project or for extra money, it's OK. I don't share the criterion of some Board of Supervisor members that, if a man is not making his living off the land, then it's not farmland. (Third Supervisor)

This third Supervisor and the second one mentioned were more concerned, not with whether the resulting parcels would, themselves, be economic farming units, but whether they would interfere with farming on adjacent parcels. However, their definitions of what would constitute interference differed:

Basically, what we look at...is whether this land is to be split into parcels much smaller than the parcel around it....If an area is pretty virgin to splits and has big parcels of

40 60,100 acres, and up, we usually deny these splits, because we're introducing a different type of farming into a big-farming area....{He gave the example of a five or ten-acre parcel} in the middle of large acreages. The man may not be a farmer or follow good farming practices. He may cause some injury to his {farmer} neighbors, especially if there are trees. He could cause disease to spread from his poorly maintained trees to his neighbors' trees....

I would look favorably to a parcel split that's like his neighbor's. (Third Supervisor)

For the second Supervisor, however, parcels smaller than their neighbors' may be preferred:

If it happens to be adjacent to a large parcel, and it really doesn't have any effect on land, and I'm sitting...with a ten-acre parcel that may be divided into two fives, I could split that and it wouldn't make a heck of a lot of difference. (Second Supervisor)

The fourth Supervisor whom we interviewed was like the first one quoted above; he wanted the split not simply to pose no serious threat to adjoining agriculture, but to "enhance...the agricultural productivity of the property." This was his primary criterion, and by it he meant, "Is there a physical make-up to the land that {would cause} agricultural production to be better performed there {if a split occurred, such as if there were}...a canal, a road, power lines" or other barriers to cultivation. In such cases, it would make sense to permit landowners to sell the "cut-off" parcels to farmers with adjacent larger parcels so as to create more economical farming units.

This Supervisor was also like the third one in his concern about precedent-making splits:

Secondly, I look at whether parcel splits have occurred there {in the area of the proposed divisions} in the past. If they have occurred and you already have a breakdown in the land and it appears that it won't make any difference, I take that into consideration. (Fourth Supervisor)



The third and fourth Supervisors interviewed share this concern, but the second one apparently would juxtapose small splits and large acreages. And the first one wants adequate parcel sizes, which he at one point in the interview defined as about 40 acres, while two of his colleagues would find much smaller sizes to be acceptable.

The data in Table 3-3's fourth section seem to reflect this disagreement among the Supervisors in respect to parcel size and parcel compatibility as criteria for deciding splits. The 18 approved cases' average size parcel was not much larger than the average for the 15 denials, 29 acres as opposed to 19.4 acres (see line 4B of Table 3.3). The denials' smallest parcels averaged a few acres larger than the approved cases' -- 14.7 acres compared to 13.4 acres (line 4C). The two groups of appeals were about equal in the percent which had a 10-acre split as the smallest parcel (line 4D). And they were almost identical in the proportion of cases in which the smallest parcel to be created was equal to or larger than existing parcels surrounding the property in question (line 4F).

Table 3-3's Section 3, "Arguments for parcelization," also appears to be patternless and of little help in explaining why some appeals were approved and some not, except possibly for the category of argument "agricultural justification". As already discussed, 50 percent of the approvals had some argument raised about the property's poor soil, the opportunity to make the land more productive through a split, etc., while only 20 percent of the denials had such justifications offered. However, we are dealing with only 12 cases, and in eleven of them the arguments were made by the applicants, themselves, not by the Planning Department staff or some other supposedly disinterested observers. As with Table 3-1's data on Planning Commission decisions on splits, "hardship" and "family interest" arguments do not seem to have weighed heavily. The percentages of denial cases with such arguments reported to have been made are close or higher than the proportions of approval cases with those arguments (see lines 3B and 3C of Table 3-3).

Several Stanislaus County public figures whom we interviewed confirmed what the data in Table 3-3 suggest-- that there have not been consistent agricultural criteria behind the Board of Supervisors' decisions on splits. When we asked one Planning Commissioner if he was satisfied with the ordinance's provisions on parcelization, he replied, "Not any more....Many of the splits the Planning Commission denies...are approved by the Board {of Supervisors} because

of emotional reasons." Another Commissioner complained that the ordinance's requirement of findings as to the agricultural consequences of proposed splits "throws too much on the judgment of the Planning Department and the Board of Supervisors." He preferred raising the minimum parcel size from 10 to 25 and making the approval of splits automatic if the landowner had 25 acres for each proposed parcel. Four members of the Stanislaus County Farm Bureau whom we interviewed also favored substituting the "findings" approach to splits with a higher minimum. When asked how they would go about justifying that a 25- or 35-acre minimum really represented the threshold of viable farming for almonds, grapes, or some other crop, three of them found that question to be irrelevant. They would set the minimum large enough that only other farmers would bother to buy the land; few if any homesite or ranchette-seekers could justify the expense of so much land.

Criticism of the Board of Supervisors' handling of parcel splits in agricultural areas extended to the Board, itself. One member admitted that the Board tended to be "subjective" in its decisions, and he approved the search by the Planning Commission for a higher minimum lot size.

#### IV: IMPLEMENTATION: REZONING OF AGRICULTURAL LAND

There was much less to criticize in the Board of Supervisors' record on rezoning of agricultural land. As discussed in Section II of this study, the County's declared policy has been to channel nonagricultural development away from agricultural areas either (a) to be annexed by a municipality or by a special sewer and/or domestic water district serving an unincorporated community or (b) to locate in General-Plan-designated industrial or commercial areas found near cities or in Planned Development areas situated adjacent either to cities or to major highways. The Planned Development designation was designed to permit commercial usage, but on a case-by-case basis, with the County able to review each proposed specific use (e.g., restaurant and gas station by a freeway, veterinary clinic east of a city but also on a main highway). The Plan demarcated also a limited amount of developable land for residential uses, primarily for large-lot (one-to-three-acre) developments in areas of largely poor soils or adjacent to existing unincorporated settlements.

This approach to concentrating growth and thereby saving agriculture from urban sprawl would be subverted if the Board of Supervisors agreed to General Plan Amendments and subsequent rezonings that significantly reduced the land reserved for agriculture by expanding the industrial, Planned



Development, and/or residential areas. We studied the County's records of General Plan Amendments, 1976-79, and found only three, involving a total of 55.2 acres, which changed agriculturally designated land to Planned Development.<sup>49</sup> In the same three years only two amendments were approved to shift land from agriculture to residential use affecting, just 21.3 acres; and there was one change from agriculture to commercial uses (1.3 acres).<sup>50</sup> During that period the Board denied, one each, changes from agriculture to Planned Development, residential, and commercial uses.

We studied the County's records of rezonings, 1977-79, involving changes from A-2-10 to some other district, and found 24 cases which the Board of supervisors approved. Seventeen concerned petitions for Planned Development zoning; and according to the Planning Department's staff report on each case, rezoning was consistent with the Plan in every instance. The Plan's "Land Use Element" called for Planned Development use in the area where the rezoning was requested.

Two other approved rezoning petitions involved changes to residential zoning for land immediately adjacent to unincorporated communities (Denair and Keyes), with approval being consistent with the County's policies of locating new such development contiguous to existing urbanized areas. A municipal-type annexation was not possible, since the two communities were unincorporated. Another case gave commercial zoning to land already designated "Commercial" on the Plan. Yet another was for residential zoning that was also consistent with the Plan. Three approvals involved land with an "Agriculture" Plan designation, but their special cases permitted rezonings without a General Plan amendment: a landfill for industrially processed residues and two separate residential schools for problem children.

Rezonings from A-2-10 to A-2-5 (i.e., five-acre minimum) could be achieved without a General Plan Amendment and could, of course, subvert the County's objective of protecting farmland from non-farm development, since there was a market for five-acre ranchettes. In 1978 a developer petitioned for A-2-5 zoning on 105 acres, the only A-2-10 to A-2-5 case we could find in the records. On January 16, 1979, the Board voted 3 to 2 to deny the rezoning.

This case and the above analysis of the 24 approvals and of the six Plan Amendments indicate that the Board implemented rather strictly the zoning policies developed in 1973-75. How could they be so relatively strict in general plan amendments and related zoning, while the same



### 3. STANISLAUS COUNTY

group of decision makers was comparatively permissive on parcel splits? Also, in their plan and zoning decisions, were they deliberately following growth compacting policies, or were the actions we studied the consequences of other policies or of the absence of policy? We tried to answer both questions by asking four Supervisors who served 1977-79 what were the criteria they used in deciding on rezoning cases. Three of the four responded that they expected new subdivisions to be annexed to municipalities, although one would allow them if they were expansions from existing rural subdivisions. The fourth joined with the other three in stating he would look more favorably on land that was poor for farming than land which was not. In explaining the kind of agricultural land which could be sacrificed, two mentioned poor soils and two cited areas where parcel divisions and/or urban development had already been considerable. One was opposed to industrial development in rural areas, because of inadequate "law enforcement protection" there: "All of a sudden there is a demand on the Sheriff for protection, such as against vandalism." Another Supervisor gave a similar adequacy-of-services argument for opposing rural subdivisions:

They're kidding themselves to believe that those people {living in rural subdivisions} will accept the fact they they're living in the country and will accept a lesser degree of service.

Other criteria mentioned were either supportive of compacting growth or not in conflict, except in the case of one Supervisor who was favorable to strip commercial developments along certain major highways.

In sum this set of rezoning norms given to us in interviews suggests that the Board meant to concentrate subdivision, industrial, and most commercial development in urbanized areas. Also, the relative compatibility of these norms suggests why the Board could do a better job on adhering to stated policies for General Plan amendments and rezoning than it did with parcel splits. Its members appeared to be in much more agreement over plan-amendment and zoning norms than they were regarding the splits (see the discussion in Section III B above on their criteria for judging parcel divisions). Why were they in greater agreement? Probably because the issues raised by parcelization are inherently more divisive. What is a viable-size parcel for almonds? Grapes? How small must parcel splits be before they become incompatible with and threaten surrounding farm parcels? How small must a proposed split be before the County says "no" to a widow or older farmer with a hard luck story? In plan amendment and rezoning cases, where a subdivision or

commercial enterprise is proposed, rather than just one new home on a ten-acre parcel, a public interest argument for denial is more likely to emerge and find majority acceptance, e.g., "the Sheriff's Department could not adequately serve it"; or "a subdivision of that size should not be on septic but within a city so that it can be served by sewer."

V. IMPLEMENTATION: COOPERATION FROM MODESTO AND LAFCO

The County's compacting-of-growth policies could be subverted also if Modesto and other cities annexed so that large areas of rural land were taken out of the County's jurisdiction and, thus, opened to sprawl-type development under city sponsorship. We noticed in the Black Hawk (Iowa) case how annexation wars in the late 1960s placed thousands of acres out of the reach of county officials who in the 1970s tried to use zoning to curb sprawl (see Case Study Number 6). However, as mentioned earlier, the City of Modesto adopted in March 1974 its own growth management program which included, among other norms, 51

That urban growth be directed to areas currently served with City services as long as economically reasonable.

Urban development should be kept contiguous as possible in order to avoid premature urbanization of valuable farm land, foster resident convenience and provide for economy in city services.

Modesto's growth-concentrating program was confirmed and strengthened in the 1979 municipal elections, when an initiative measure passed ("Measure A") which required an advisory referendum on any extension of trunk sewer lines. Without such extensions, the City's borders could not significantly expand.

Since the adoption of growth management policies in 1974, Modesto's government has been conservative towards sewer service expansion. Both in 1974 and today (Fall of 1980) the current sewer area is about 34 square miles. The City's sewage treatment facilities were designed with the capability to handle ultimately a 56-square-mile area. Since 1974 Modesto has turned down most proposals to expand sewer service beyond the 34-square-mile area ("the Current Sewer Service Area") into the remaining 22 square miles of the system's ultimate capacity. Only one extension, involving 466 acres, is in the final planning stages. A second expansion proposal "awaits a public advisory election," scheduled to be held in March 1981.<sup>52</sup> The City has continued



### 3. STANISLAUS COUNTY

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to grow; there were 94 annexations totaling 3,736 acres, between March 1974 and October 1979. But "all 94 were immediately adjacent to the City." 53

What would happen, however, if Modesto developers and others pressured the city government into an expansionist annexation policy? An effective, external constraint on excessive annexations could be Stanislaus County's Local Agency Formation Commission (LAFCO).

Authorized by a 1963 State of California statute,<sup>54</sup> LAFCOs were to be created in each county and "to review and approve or disapprove...

- (1) The incorporation of cities;
- (2) The formation of special districts, and
- (3) The annexation of territory to local agencies {e.g., cities, special districts}....
- (4) The exclusion of territory from a city.

Two of its five members are Supervisors selected by the County Board, another two are appointed by a selection committee consisting of the mayors of each city, and the fifth "representing the general public" is chosen by the Commission's other four members. The statute both gives LAFCOs the power to turn down annexations and specifies that among LAFCOs' purposes in employing its powers "are the discouragement of urban sprawl and the encouragement of the orderly formation and development of local government agencies...." 55 To learn if Stanislaus' LAFCO was pursuing this statutory mandate, we interviewed two current and one recent-past LAFCO member, as well as the Commission's chief staff person. The four agreed that LAFCO had been denying noncontiguous annexations and ones considered premature, such as where the municipality or community services district appeared to lack the capacity adequately to serve the area proposed for annexation and also where, at least in the case of the cities of Turlock and Waterford, the "inventory" of vacant land in the city appeared so high that permitting additional land to be subdivided was considered incompatible with LAFCO's mandate to curb urban sprawl. As a check on these reports from LAFCO members and staff, we interviewed three representatives of developer-builder-realtor interests. The three's responses included the complaint that LAFCO had been regulating annexations too strictly. One observed that his developer colleagues "hated" LAFCO for the costly delays and other obstacles it caused them.



While LAFCO has cooperated with the County's policies for compacting growth, some Stanislaus officials would like LAFCO to go the further step of directing annexations away from prime farmland. So far the only geographical constraints LAFCO has tended to impose are that the area proposed for annexation be consistent with the municipality's own land-use plan and the County's plan, as well as being serviceable by the jurisdiction seeking the annexation. Consistency between city and County plans has been achieved by limiting cities' planning areas to the "urban transition" area drawn around them in the County's 1975 Land Use Element. In the minds of some farmers and others, however, the aggregate of those urban transition areas is too large, about 24,000 acres.<sup>56</sup> These critics note that annexations can proceed in that big area largely without regard to the quality of farmland affected. Another criticism they raise is over the County's policy of liberal parcel splits in urban transition areas--one every two years, without the need to establish that agriculture in the vicinity will not be negatively affected. The only significant constraints besides the time and number limitations, are that the site use plan must be consistent with the nearby city's growth plans and the landowner must agree to annex if the city grows out to him/her and demands it. However, as discussed above, most of the urban transition land tends to be prime.

#### VI. IMPLEMENTATION: COOPERATION OR SABOTAGE FROM STATE AND FEDERAL AGENCIES?

We could find no evidence that actions by either the State of California or the Federal Government had hindered either the County's or Modesto's growth management policies. We heard of no highways or airports having been built on or proposed for prime farmland. We were told, instead, that the alignment for Interstate 5 was shifted westward onto the beginning of the foothills in order to avoid taking good cropland. And the U.S. Environmental Protection Agency, a source of new funding for improving Modesto's waste water treatment facilities, has been encouraging the City to consider ways to minimize the loss of prime farmland which could result from the expansion made possible by improved sewage treatment capacity.<sup>57</sup> It may be that, without Modesto committing itself to such measures, EPA funding will be cut.

The State of California's role in promoting the County's growth management policies has been critical. As discussed earlier in this report, the mandate that Williamson Act land had to be protected with zoning gave a major boost to

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exclusive agricultural-use zoning in Stanislaus. And it seems unlikely that the elimination of A-1 Unclassified zoning in 1973 would have been politically possible without the state mandate of consistency between general plan and zoning.

#### VII. CONSEQUENCES: LAND USE AND LAND PRICES

The combination of the County's, Modesto's, and LAFCO's policies for concentrating growth in urban areas appears to have succeeded. Table 3-4 indicates that all the population growth occurring in the County, 1970-78, was located in incorporated areas. Another achievement was zoning almost all the remaining farmland into exclusive agricultural-use districts, with rezonings out of such districts being rare, except in the Urban Transition areas around cities, where the zoning changes resulted almost entirely from annexations. However, parcel splits to the detriment of farming were largely unregulated in the approximately 24,000 acres comprising the transition areas. And the Board of Supervisors was not strict in limiting splits in the A-2 land outside the zones.

Though not strict, the County's limitations on splits did, according to developers/realtors, reduce the supply of buildable rural land enough to affect prices. If there was not some such effect, we might suspect that the County's policies had been irrelevant. On this question we interviewed five persons associated with the development industry. Two said that land prices had been inflated, but could not distinguish between the impacts of the County's and Modesto's policies. Another member of this "jury" on price effects mentioned only the cost-increasing consequences of the time delays associated with obtaining zoning and/or other clearances. Another two believed that prices of smaller rural parcels, such as the five-to-ten-acre pieces sought for ranchettes, were more expensive because of zoning policies, with the impact being in the range to two to six percent per year. If the County's policies were relaxed, ranchettes could be cheaper; and there might be a deflationary influence on the larger city lots which compete for buyers with ranchette parcels.

#### VIII. POLITICAL COSTS

. We asked almost every one of the 35 people we interviewed in Stanislaus whether the County's zoning policies affecting farm and ranch land had been election issues had

Table 3-4

## STANISLAUS COUNTY POPULATION ESTIMATES

	1960	1970	1978	Annual Rates of Growth	
				1960-70	1970-78
Unincorporated areas	58,400	94,335	91,300	4.91%	-0.40%
Incorporated	62,267	100,171	150,300	4.86%	6.26%
Total County	157,294	194,506	241,600	2.14%	3.03%

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Source: (1960-70) U.S. Census, (1971-78) State Department  
of Finance.

Reproduced in City of Modesto, "Modesto Statistical Summary:  
1979" (Modesto, California, March 1979), p. 1.



### 3. STANISLAUS COUNTY

contributed to any Supervisor's election victory or defeat, and/or had resulted in the firing or demotion of any Planning Department or other staff member. With these questions, we were probing for the political costs of saying "no" to developers and landowners (or of failing to turn down rezonings and parcel splits in enough cases to anger advocates of growth management). In regard to Supervisors' elections, one incumbent lost his seat in 1972, reportedly at least in part through realtor support of his opponent, Haig Arakelian, who was regarded as more sympathetic to development interests. 58 No one could recollect growth policies being an election-influencing issue later in the 1970's. But in the November 1980 Board elections, one of the successful candidates was a former Farm Bureau President with part of his platform being a commitment to tighter zoning policies to protect good farmland.

We interviewed four of the Farm Bureau's current directors and found them all dissatisfied with the County's performance regarding splits on A-2-10 land. They found it too lenient and strongly objected to the consequences of that leniency: non-farmer neighbors to farmers who complain about spraying, thievery of fruits and vegetables, higher land prices for farmers who want to add to their holdings but must compete with ranchette buyers as well as with other farmers, and higher traffic volumes on farmer-used roads, among other hindrances to agriculture. Why were these Farm Bureau leaders strongly in favor of tighter restrictions? They responded that they wanted to stay in farming in Stanislaus because of the excellent climate, soil, and water availability. One of them had already moved twice in his farming career to escape urbanization. While he admitted that his family was financially much better off after each move, his preference was not to uproot them again.

When we interviewed five representatives of the real-estate/development industry, we found dissatisfaction with County zoning policies also, especially over the restrictions on ranchette-size parcels, for which -- we were told -- there was a strong demand. However, there was no evidence of an organized effort to influence Board of Supervisor elections and/or to promote amendments to the County zoning ordinance on parcel splits or rural rezonings. Development interests might turn to such political activism at the County level. They engaged in it during 1979 to attempt to defeat Modesto's growth-management Measure A and the mayoral candidate who supported the initiative. According to several knowledgeable sources, it was an expensive campaign, with developers, realtors, and building trades labor lining up against the Measure. They lost a close election in Modesto. They will

probably continue to try to influence elections there; but if Modesto frustrates them in their need for developable land at tolerable prices, and if other County cities fail to supply their needs, they may turn to strong efforts to change the composition of the Board of Supervisors and the nature of its zoning policies. The Urban Transition areas could be widened; the requirement of annexation for subdivisions, relaxed; and the minimum parcel size for A-2, dropped to five acres or even less.

Our inquiries as to whether any administrators had suffered firing or other punishment as a result of rural zoning policies drew "no's" from all sources. As mentioned above, there had been a Planning Director who promoted strongly the growth management policies this report has discussed. However, he and his staff avoided over-advocacy which could have antagonized the Board of Supervisors or have made them (the staff) convenient targets for developer/realtor opponents of those policies. One developer representative observed about the Planning Director, "He was open. You could sit down and talk with him. We didn't always agree, but I respected him for listening to what I said."

#### IX. LEGAL COSTS

By the "legal costs" of the County's zoning policies, we have in mind the efforts the County has had to expend in defending those policies in court and, also, the erosion of their efficacy as the result of unsympathetic court decisions. We found only one case, involving the appropriateness of an environmental impact report and yet to be decided. When we asked why more suits had not been filed, a private attorney specializing in area land-use cases replied that potential litigants felt that they probably would not win. And he agreed with them, given what he found to be the tendency of California courts to side with cities and counties on the kind of growth management practiced in Stanislaus. A realtor told us that he would advise clients against going to court, because "most judges don't understand land-use law and hence they defer to the cities and counties."

#### X. FINANCIAL COSTS TO THE COUNTY GOVERNMENT

The County's Department of Planning and Community Development (i.e., Planning Department) submitted the following estimates of the cost to the County in developing and

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administering the policies this report has been discussing:

A. Start-up costs:

1. Special studies (e.g., for preparing the General Plan): \$157,000, of which about \$146,000 for salaries and \$11,000 for other costs.

2. Developing the new ordinance: included in the above \$157,000 (probably 10 percent of that total).

B. Costs of administering the policies on a day-to-day basis: \$35,000 per year, consisting exclusively of salaries.

C. Cost of periodic revision, updating, and other changes in policies: about \$10,000 per year, consisting exclusively of salaries.



## NOTES

1. Stanislaus Area Association of Governments, Stanislaus Area Environmental Resources Management Element: Agriculture: Data Report (Modesto, California, 1976), p. 1.
2. Harter R. Bruch, Director, Stanislaus County Department of Planning and Community Development, Memo to {Supervisor} William Ulm, "Report on Agricultural Land" (February 5, 1980), p.2.
3. Ibid., p.1.
4. Environmental Resources Management Element (1976), p.1.
5. City of Modesto Department of Planning and Community Development, "Modesto Statistical Summary: 1979" (Modesto, California, March 1979), p.8. This source gives for 1978 2,200 persons employed in "Agric. Services, forestry, fisheries." We assume that in Stanislaus the great majority of those 2,200 persons were in agriculture.
6. Ibid.
7. Ibid.
8. U.S. Department of Commerce, 1974 Census of Agriculture, Vol. 1, Part 5, California: State and County Data, p. 289.
9. "Modesto Statistical Summary," p. 1.
10. Ibid.
11. "Report on Agricultural Land," p. 7.
12. "Modesto Statistical Summary," p. 1f.-
13. Ibid.
14. Ibid., p. 11.
15. "Report on Agricultural Land," p. 7.
16. Stanislaus Area Association of Governments, Stanislaus Area Environmental Resources Management Element: Agriculture (Modesto, California, 1972), pp. 5-6.

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17. "Report on Agricultural Land," p. 6.
18. "Modesto Statistical Summary," p.1.
19. Stanislaus County Farm Bureau, "Policy Statement: Land Use in Stanislaus County" (Modesto, California, August 13, 1971).
20. Source: Regional Science Research Institute, Philadelphia.
21. Stanislaus County, Zoning Ordinance, January 3, 1980 (Modesto, California, 1980), p. 14.
22. Ibid.
23. Stanislaus County Planning Commission, 'Stanislaus County "Urban Transition" Procedure' (Modesto, California, December 18, 1975).
24. City of Modesto, Department of Planning and Community Development, 1979 Urban Growth Policy Review (Modesto, California, November 1979), p. 1.
25. Stanislaus County, Zoning Ordinance (Modesto, California, as amended April 16, 1963), p. 9.
26. Interview with Schueller, January 1980, and with a member of his Planning Department staff, April 1980, with both interviews carried out in Modesto, California.
27. Interview with that farmer, Stanislaus County, January 1980.
28. West's Ann. Gov. Code {California} Sec. 51200 to 51295 (1980).
29. Interview with a member of the Stanislaus County Planning Department, Modesto, January 1980.
30. Environmental Resources Management Element (1972), p. 7.
31. Ibid.
32. Stanislaus County Planning Commission, minutes of March 13, 1973 meeting.
33. Quotations from minutes of Stanislaus County Planning Commission meetings of February 8th, March 13th, March 22, and April 26th, 1973.
34. Minutes of Joint City-County Planning Commission meeting of March 22, 1973.

35. Interview with a member of the Stanislaus County Planning Department, Modesto, January 1980. The relevant statute can be found in West's Ann. Gov. Code {California} Sec. 65860 (1980).
36. From an unpublished manuscript.
37. Interview with that Supervisor, Stanislaus County, January 1980.
38. Interview with that Supervisor, Modesto, April 1980.
39. Minutes of Stanislaus County Planning Commission meeting of June 21, 1973.
40. "County Scores with General Plan," Modesto Bee, January 10, 1974.
41. Robert Davis, Department of Planning and Community Development, memo to Board of Supervisors, October 21, 1975. p. 3.
42. Ibid., p. 5.
43. Interview with that Supervisor, Stanislaus County, January 1980.
44. Interview with that Supervisor, Modesto, January 1980.
45. Zoning Ordinance (1980), p. 15.
46. Data on staff recommendations were missing in two cases.
47. These interviews took place in Stanislaus County in January and April 1980.
48. Ibid.
49. General Plan amendments 77-1, for a cultural center; 78-2, a lighting fixture store; and 78-12, a soccer and softball recreation complex.
50. General Plan amendments 77-6 and 78-16.
51. City of Modesto Planning and Community Development Department, Urban Growth Policy Review: 1977 (Modesto, California, 1977), p. 1.
52. 1979 Urban Growth Policy Review, p. 2.
53. Ibid.



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- 54. State of California Statutes, Ch. 6.6, §54733-799.
- 55. Ibid., §54774
- 56. "Report on Agricultural Land," p.6.
- 57. U.S. Environmental Protection Agency, Region X, Draft Environmental Impact Statement, Modesto Wastewater Facilities Improvements, April 1979 (San Francisco, 1979), pp. 121-82.
- 58. An opinion shared by a Board of Supervisors member in office in 1972 and by a Planning Commissioner who also served at that time.

## Case Study No. 4

### LARGE LOT AGRICULTURAL ZONING IN WELD COUNTY, COLORADO

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LARGE LOT AGRICULTURAL ZONING  
IN WELD COUNTY, COLORADO

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Center for Governmental Studies  
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I. INTRODUCTION — THE SETTING

Located in north-central Colorado, Weld County covers an area of 4,004 square miles. This vast expanse supports a varied agricultural sector, including livestock on large areas of semiarid steppe; dryland wheat and barley; and irrigated farming of sugar beets, corn, onions, and potatoes. In 1969 Weld was the second highest county in the nation in value of agricultural products sold. According to the Census of Agriculture taken in 1974, it was then third, with its total products sold being nearly \$600 million.<sup>1</sup> In Colorado, itself, Weld has been accounting for about 30 percent of the state's agricultural sales.<sup>2</sup> In 1974 the County's major farm products were livestock (mainly cattle), wheat, corn, poultry, dairy products, and vegetables.<sup>3</sup> That year over 2.3 million acres (or about 92 percent of the Weld's total land surface) were in farms, but only about 242,000 acres comprised harvested cropland.<sup>4</sup>

The cropland is concentrated in the County's southern and central-western areas, with the most productive--that which is irrigated -- found around Weld's main city, Greeley, and northwest from there towards Fort Collins and southwest to the Denver area. Extensive irrigation is possible in that part of Weld thanks to the South Platte River, its tributaries, and major public investments in irrigation facilities, especially in the Colorado Big Thompson Project, which diverts water from the Western slope of Colorado's Rocky Mountains. Since the area receives fewer than 15 inches of precipitation per year, crop production would be severely limited without irrigation.

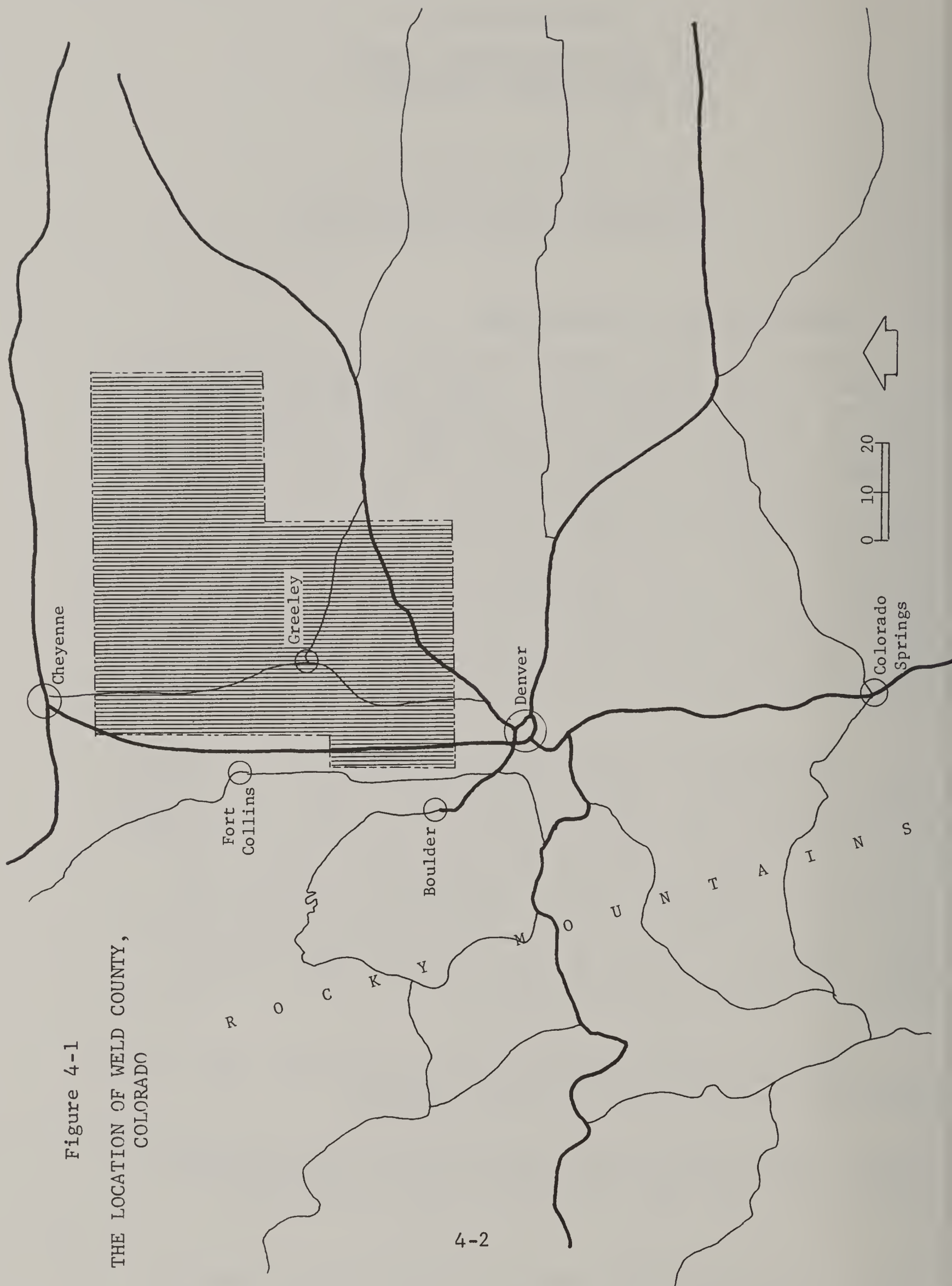
While the area's proximity to the mountains facilitates irrigation and promotes agriculture based on it, that geographic location also threatens farming.

Corporate executives who make decisions about business siting, working-age persons seeking better opportunities, and retirees have been attracted to the scenery and

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\* Assisting in the field research for this case study was James D. Riggle.

Figure 4-1  
THE LOCATION OF WELD COUNTY,  
COLORADO



recreational opportunities which the mountains provide. The proximity to Denver has also stimulated growth in Weld, as have the comparatively mild, little-snowfall winters. Between 1970 and 1979 Greeley's population grew about 34 percent, from 38,902 to an estimated 51,993.<sup>5</sup> Other towns in the rich, irrigated cropland area of Weld also expanded rapidly in that period, although none approaches Greeley in size.<sup>6</sup> Population in unincorporated areas grew around 16 percent.<sup>7</sup> The County's single most important employer, Eastman Kodak, built a plant southeast of Windsor which provides work for about 3,000. In July 1980 Hewlett Packard exercised an option to buy 550 acres about 1.5 miles west of the Greeley city limits for the purpose of building an electronics plant that would employ as many as 4,000 to 5,000 people.

The nonagricultural development occurring in the Greeley area and towards the mountains and Denver has created the kinds of problems for agriculture which are noted in the reports on Black Hawk and Stanislaus counties: nuisance complaints raised by nonfarmer families living adjacent to farming operations, especially over the feedlots which Weld's large cattle industry supports and, also, over aerial spraying of crops; vandalism of farm equipment; and increased traffic on farm roads (see Case Study Reports Nos. 3 and 6). As in Stanislaus, whose cropland farming also depends on irrigating water, there developed a set of problems arising from irrigation: children playing in ditches damaged the siphon tubes used to irrigate and disrupted the water flow in other ways. Another serious problem for farmers was the inflation both in land values and water rights:<sup>8</sup>

No longer is the price of land in these agricultural areas {near Denver, from Greeley to the mountains} controlled, or even influenced, by the crop value or agricultural history of the land. Further, where there is a good supply of irrigation water running with the land, there is still another inflationary trend in existence. The value of surface water, direct diversion rights, reservoir storage rights and more recently the well water rights, are being inflated by demands of the existing municipalities as well as the new industries coming into the area. Water rights values are no longer set by how much the farmer can afford to pay to irrigate a crop.



Farmers depending on irrigation water had the additional concern that urbanization might involve farmland owners along their ditches selling water rights to be used on developing land elsewhere in the County. In the water rights market (i.e., right to a certain supply of irrigation water), the rights can be partially or totally stripped from one parcel and transferred to other land in that or the next county (or even farther way). However, if enough formerly irrigated parcels along a ditch are so stripped, the remaining demand for water may be insufficient to keep the ditch operating. The ditches require a certain minimum volume of water to be viable. According to one Weld County farmer whose corn fields depend on irrigation and whom we interviewed, at least two ditch companies had folded because of insufficient "demand to charge up ditches, since some farms were sold."

These concerns for protecting water rights and avoiding conflicts with nonfarmer neighbors were widespread among Weld County farmers because residential growth was widely scattered in farming areas. A study of subdivision lots platted in the County's unincorporated areas between 1965 and 1970 found that 57 percent of the total of 1,003 such lots were sited three or more miles from the nearest incorporated town. <sup>9</sup>

## II. POLICY RESPONSES TO URBAN SPRAWL: HISTORY

In 1973 the Government of Weld County took a series of steps to protect the County's farming sector from incursions by nonagricultural development:

A. Adopted a Comprehensive Plan which sets forth the following policies for land use, among others: <sup>10</sup>

Agriculture is considered a valuable resource in Weld County which must be protected from adverse impacts resulting from uncontrolled and undirected business, industrial and residential growth....  
{A}ny uses of prime irrigated farmland for uses other than agricultural will be critically reviewed to insure the proposed development will not adversely impact the agricultural interests of the county....

In order to minimize conflicting land uses and minimize the cost of new facilities and services to the taxpayer, industrial, commercial, business and residential development will be encouraged to locate adjacent to the existing 27 incorporated towns and in accordance with the comprehensive plans and stated wishes of each community....

Because adequate water supplies are essential for agricultural production, each non-agricultural development will be encouraged to obtain its necessary water from sources which are considered nonessential to the maintenance of agricultural production in the particular area....

Commercial development will not be encouraged in the unincorporated areas of the county unless it can be shown by the developer that the proposed commercial use cannot reasonably be located in an urban area....

Zoning for industrial use in areas outside the areas covered by the comprehensive plans of the existing municipalities shall be encouraged only for low employee concentration, agriculturally related industries or other industries that can show they cannot reasonably be accommodated by the municipalities' comprehensive plans.

B. The County's Zoning Resolution (i.e., ordinance) was changed to require the Board of County Commissioners (the five-member legislature) to make decisions "consistent with the policies of the Weld County Comprehensive Plan."<sup>11</sup> Over 90 percent of the County's land had previously been zoned "A-Agricultural Zone District," which permitted as "uses...by right" only "Farming, Ranching and Gardening," plus uses accessory to the main ones and one single-family dwelling per legal lot. However, the change requiring consistency with the new comprehensive plan promised to make rezonings out of the Agricultural District more difficult and/or less detrimental to commercial farming than had been the practice in the past.

C. Another 1973 amendment of the Zoning Resolution strictly limited the minimum size of legal lots in the Agricultural District, each of which was entitled to a single-family residence. Previously, the minimum had been

40,000 square feet, or enough land to handle a septic system successfully. On December 26, 1973, the County Commissioners increased it to 80 acres for irrigated farmland and 160 acres for dry, with these minima supposedly representing standards for viable irrigated and dryland farming, respectively. However, being so large, they promised also to discourage speculators or hobby farmers from buying land, since to obtain one additional building permit they would have to pay for at least 80 or 160 acres.

D. An amendment to the County's Official Subdivision Regulations permitted exceptions to the 80/160-acre minima where the land was zoned "Agricultural" but the particular piece was not productive, such as because the soils were poor or it was too isolated to be farmed with modern machinery. In such a case, the County Commissioners could grant a "recorded exemption" from the subdivision regulations so as to divide an existing parcel into two legal lots, provided that the property had not been split in the past five years (and no additional division would be allowable during the subsequent five years).<sup>12</sup> This exemption procedure would permit, for example, a farmer who retires to retain his homesite while selling off the bulk of his land holdings. Each of the two newly created parcels had to be at least one acre, and the five-year moratorium on further splits applied to both parcels.

This concession to farmland owners is similar to a provision of the Stanislaus (California) County Zoning Ordinance which permits a one-time-only two-parcel split for owners of land which had been rezoned from a permissive agricultural district to a restrictive one in the 1960's and early 1970's (see Case Study Report Number 3). They could divide the land any way they wished as long as "one of the parcels created is at least one acre in area and not in excess of three acres and contains a single-family dwelling which existed on the property at the time the zoning was changed and the other parcel satisfies the otherwise required minimum parcel size."<sup>13</sup> In both counties this opportunity to sever one parcel, either to retain as a retirement-from-farming homesite or to sell, promised to placate farmers who were hostile or undecided about the main land-use reforms -- limitations on rezonings and higher minimum parcel sizes for building permits on land zoned agriculture.

In Weld County organized farmers tended to oppose the reforms discussed 1971-73 and adopted in 1973. At that time and currently, almost all farmer associations in the county



(Farmers Union, Cattlemen's Association) joined for political and other purposes into the "Ag. Council." A member of the Council recalls that it "formally" opposed the comprehensive plan when it was adopted in 1973. A County Commissioner from that period and two Planning Commission members remembered farmer opposition as being strong and focused on, among other issues, the plan's restriction on farmers' freedom to sell or develop land for nonagricultural purposes. Another Planning Commission member recalled the farmers as more in favor than opposed, with farmers "that had experience with nearby development...{knowing} the problems which could arise, such as clogged irrigation tubes from trash." 14

Farmers' opposition was softened by the County decision-makers' willingness to compromise and, perhaps also, by the County's willingness to proceed slowly and to listen to farmer complaints patiently. The public meetings associated with the plan and zoning changes extended over more than two years. The Ag. Council was invited to submit amendments, some of which were accepted. A County Commissioner recalled, "We listened to their input we thought we could use and used a lot of it to make changes." An Ag. Council member confirmed, "They accepted some of our ideas." According to the then Planning Director, a key concession was the exception process whereby a farmer could split a parcel once every five years. 15

Realtors and developers also tended to oppose the 1973 policy changes. What arguments did the proponents of the new plan and zoning amendments use to sell their positions? We lacked the time to seek out the relevant public hearing minutes and newspaper articles. Instead, we interviewed two of the three County Commissioners and four of the nine Planning Commissioners serving in 1973, asking them (among other questions) why they supported the policy changes that year. We assumed that they had used largely similar arguments to persuade others, as well as themselves, during the 1971-73 debate. Four of this group of six 1973 policy-makers whom we interviewed justified their support of stricter zoning on the grounds of protecting farmers from the consequences of permissive zoning. One former County Commissioner recalled wanting to protect farmers from neighbors who sold one-acre lots to families "with kids, trash, and everything else next door." A Planning Commission member at that time remembered, "I felt zoning laws weren't tough enough when I got on the Planning Commission. Cities in the south {part of the County} were taking agricultural water for growth....But agriculture needs all the water it can get."

In Weld, as well as in Stanislaus, there were conspicuously bad nonagricultural developments amidst farming areas to which policy makers pointed to justify their decisions

for more restrictive zoning. In Weld an example to which both a County Commissioner and Planning Commissioner pointed (without prompting from us) was a subdivision in the Fort Lupton area which was notorious for poor construction standards and intermixing houses and mobile homes.<sup>16</sup> With the then existing minimum building-lot-size, one-acre housing developments occurred without rezoning being required and without the quality review which the rezoning process can impose.

Two of the six policy makers we interviewed based their support of the 1973 changes in part on cost-of-service or adequacy-of-public-services arguments:

We didn't want any more subdivisions ten miles from town which demanded services....They wanted everything: fire, police. It was difficult to provide Sheriff protection all around this large county.

. . .

To eliminate scattered growth, the comprehensive plan says development should be around existing communities. The outlying areas didn't have proper sewer facilities..; proper police and fire protection was not readily available. These things got our thinking in line.

Another policy maker saw as a principal benefit of the new policies the revitalization of several of the County's smaller towns which recent nonagricultural development had by-passed. He expected the plan's stricture on siting new development around existing communities would divert to those smaller towns growth which might otherwise had been sited in unincorporated areas. In addition he hoped that the new development would be a mix of residential, commercial, and industrial, so as to diversify the town's real estate tax base and avoid overdependence on residential property.<sup>17</sup>

In sum, the 1973 policy changes could be justified with arguments of rather broad appeal. The interests which were to be protected were those of farmers (from nonagricultural developments competing for water and hindering their operations in other ways), County and town taxpayers (from supporting expensive services to scattered developments), and residents (from poor-quality public services and poorly designed developments).

Two well-informed personalities from the 1972-73 period believed that a key ingredient in the successful adoption of stronger zoning policies was an aggressive director of the



County's Planning Department (actually, Department of Planning Services). One former colleague called him an "advocacy planner," while a second official labeled him a "hot head," but someone "we needed...to get this off the ground."<sup>18</sup> He provided persistent leadership to keep growth management to protect agriculture on the Planning Commission's agenda, to develop policy options through the leg work of his staff and through negotiations with farmer and other interest groups, and to build public support through holding hearings and cultivating the media. Someone from among the part-time Planning Commission or County Commission members may have had the motivation to provide such time-consuming leadership, but that was unnecessary. The Planning Director was willing and able.

Why did the 1973 policy makers decide on 80 and 160 acres as the minimum parcel sizes? A Planning Department staff member from that period gave the following explanation:<sup>19</sup>

We took census information and looked at the average sizes of ranch-use and irrigated farming in the county. What we originally came up with was that we should be going to 320 acres of dryland and 160 as irrigated. We knew that wouldn't fly at all, so we came up with 80 and 160 acres as a compromise.

A recently passed state law required counties to have subdivision controls where parcels being created were less than 35 acres. County officials wanted a higher parcel minimum because they saw land speculators dividing farmland into 40-acre sections and, also, because they believed that ranchettes of that size would tend to make bad neighbors to commercial farming.

### III. IMPLEMENTATION: REZONING OF AGRICULTURAL LAND

To what extent have the Weld County Commissioners used their zoning powers to compact nonagricultural growth around existing municipalities? The County's 1973-adopted Comprehensive Plan calls for that pattern of development, the County's Zoning Resolution provides for zoning decisions to be consistent with the Plan's policies, and agriculture should benefit from a compacting policy. The more compact the growth, probably the fewer the farm acres that have non-farmer neighbors which get in the way of commercial agriculture (i.e., competing for water, raising nuisance complaints).



A. Consistency of Rezoning Decisions, Mid-1977  
through December 1979, with Comprehensive  
Plan's Policies

Table 4-1's data, which are derived from the written record on each case, suggest that Weld County's zoning authorities followed rather closely the 1973 Comprehensive Plan's policies. Growth was largely concentrated near existing towns. Eighteen out of the 24 (or three-quarters of the total) approved rezonings out of agriculture, mid-1977 through the end of 1979, involved parcels located within a mile of the corporate limits of a nearby city (see Table 4-1's line 1). Another two cases were situated between one and two miles out. None of the five rezoning petitions which the County denied in that time period concerned land within a mile from town, while two were in the one-to-two-mile zone (lines 1 and 2 of Table 4-1).

Table 4-1 suggests that zoning officials tended to follow also the Plan's policy of rezoning according to the comprehensive plans and expressed wishes of the municipalities concerned. Twenty-three of the 29 cases involved land within the planning areas of towns, with those areas in Weld County not extending out from municipal boundaries more than three miles (except in Greeley's case) and normally being less than three. Among the 21 of those 23 petitions which the County approved (line 3), at least 16 were found by the planning staff to be consistent with the relevant town's plans (line 3a). (The written record lacked finding as to consistency in three cases).

Twenty-five of the total of 29 rezoning cases involved land within the state-mandated referral zone for towns, that is, they were within three miles of a city's borders and the County was required to seek the town authorities' opinion (see line 4). Among those 25 cases, the County approved 23; and in 19 of the 23 the relevant town gave approval or at least raised no objections (line 4a). In one case the city took no stand, but in three there were objections: to the proposed use (Erie wanted the area to be residential rather than commercial), to the lot sizes (Greeley's plan called for a larger minimum than was proposed), and to the developer's failure to agree to annex (Fort Lupton wanted the land, which was adjacent to the city, to be annexed). One of the five denied rezoning petitions also involved the County deciding contrary to the relevant town's wishes (Erie had no objections to a subdivision development 1.5 miles to the northeast, but the County denied it). However, in 20 of the 24 cases where the towns took stands (lines 4a and 4b), their wishes and the County's decisions were congruent.

Table 4-1

REZONING DECISIONS  
 PETITIONS TO CHANGE FROM AGRICULTURAL USE  
 JULY 1977 THROUGH DECEMBER 1979

	<u>Approved (%)</u> (Total=24)	<u>Denied (%)</u> (Total=5)
1. Cases in which the proposed nonagricultural district would be less than one mile	18 (75%)	0 (0%)
2. Cases in which the district would be between one and two miles out.	2 (8%)	2 (40%)
3. Cases in which the land proposed for rezoning fell within a town's planning area (i.e., normally up to three miles).	21 (88%)	2 (40%)
a. In which the Planning Dept. staff reported the proposed use would be consistent with the nearby town's comprehensive plan.	16	1
b. Report that the use would be inconsistent or not clear as to consistency.	2	1
c. No report as to consistency.	3	0

Table 4-1 (continued)

	<u>Approved (%)</u> (Total=24)	<u>Denied (%)</u> (Total=5)
4. Total cases referred to towns for evaluation (i.e., within the 3-mile referral zone).	23 (96%)	2 (40%)
a. In which towns gave approval	19	1
b. Cases in which the town objected.	3	1
c. Town took no stand.	1	0
5. Cases with an "agricultural" justification for the rezoning.	4 (17%)	0 (0%)
a. Cases involving an agribusiness which required placement in a rural setting.	2	0
b. Cases in which the Planning staff reported that land involved was suitable for commercial agriculture.	2	0

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Sources: Case files of the Department of Planning Services,  
Weld County, Colorado.



Thus far, the written record has "explained" 18 of the 24 rezoning approvals in terms of the close-to-town criterion (i.e., within a mile -- Table 4-1's line 1) and 19 of the 24 in terms of the according-to-the-town's-wishes rule (line 4a). For another four cases, the record includes apparent agricultural justifications for rezoning. Two of these concerned petitions to rezone to commercial use for agribusinesses which, according to the Planning Department's recommendations, were of the type (farmers' supply and service centers) that the 1973 comprehensive plan intended to be located in rural areas, close to their farmer clients. Another two of this group of four "agriculturally" justified approved rezonings involved parcels which the planning staff reported to be uneconomic for farming, either because of poor soils, small size, and/or proximity to existing residential development (lines 5a and 5b of Table 4-1).

Using the same three criteria, we can "explain" four of the five denials of the mid-1977-through-1979 period. As Table 4-1 indicates, none of the five was within a mile from town (line 1); and the case records on none contained an agricultural justification. Only two fell within a municipality's referral area, and the relevant town objected in one case. In the other, concerning the subdivision proposed a mile and a half outside of Erie (discussed on page 4-10), both the town and the County's Planning Department recommended approval. However, the Planning Commission favored denial, according to its report to the County Board of Commissioners, because the land was prime for agriculture and the proposed 33 one-acre lots should have been sited adjacent to a municipality. The County Board accepted the Commission's recommendation on a vote of four to one.

B. Consistency of Decision-Makers' Criteria with Comprehensive Plan's Policies

To test whether, as the written record suggest, County zoning authorities were really basing their decisions on the criteria of closeness to town, the municipality's wishes and the agricultural viability of the parcel in question, we interviewed all five current (Spring 1980) County Commissioners on the criteria they used in rezoning cases. We began with open questions (e.g., "What criteria or standards of judgement do you use?") and followed up with probing questions which asked about a variety of decisional criteria found in the literature (e.g., trend of development, fiscal impact, consistency with the plan). Finally, after letting the respondents explain their own spontaneously offered criteria and react to the candidate ones we provided in the probing questions, we asked them to rank the top

criteria among those discussed. Three of the five Commissioners spontaneously mentioned the agricultural quality of the land in question as one of their bases for deciding on rezonings out of agriculture for residential use, that is, they would tend to approve proposed residential uses where the land was poor for farming and to deny where it was prime farmland. A fourth Commissioner endorsed this criterion in the context of a probing question. And three of these four ranked it among their top two criteria when judging residential rezonings.

Only two Commissioners spontaneously mentioned the preference of the nearby town as a decisional criterion, and just one of the two ranked it first or second in importance. In contrast, four of the five Commissioners gave closeness to town as one of their bases for judging residential rezonings; and three of them ranked that criterion among the top two. Their reasons for stressing closeness included concerns for agriculture, for the County's financial health, for their own political careers, and for the viability of the County's smaller towns:

{If subdivisions are located far from town amidst farming operations, the residents} complain a great deal about crop dusting and yet that is a necessity. They complain of the dust on the roads or the farmer tilling his field and creating dust. They don't like the cattle feed-lot smells; they don't like the flies that some agricultural businesses bring. (Commissioner "A")

We have too many roads and we can't provide the services that the people demand of us {i.e., snow plowing, oiling or hard-surfacing rural roads}.... The County has to provide ambulance service, too....We just don't have the money. In our charter, we have...a five percent limit per year on increases for expenditures. Especially if our government is going to take away these revenue sharing things down the road, I can't see how we can survive. (Commissioner "A")

It's a selfish consideration. I don't want to be responsible for subdivision roads or county roads that probably weren't built for the traffic standards that subdivisions create. (Commissioner "B")

More important is to get it {the subdivision} on sewage and water systems that are in existence, where you can expand those instead of developing new ones.... (Commissioner "C")

To me, it is just as important that we keep from doing too much development... from the standpoint of people getting out there and having noses that are overly tender as far as the sort of agriculture which has been the heart of Weld County's agriculture, the livestock industry; and that's just as important whether it's a rock hill that is immediately next to a potential dairy or feed-lot hog operation, as it is to take that acre which is good {farmland}. (Commissioner "C")

I think when you only think if the land is agriculturally productive or not, you close your eyes totally to the viability of the 28 towns in the County. Close your eyes to the fact that leap-frog urban development doesn't pay. (Commissioner "D")

These last two quotations, from two different Commissioners, point to dilemmas which the farmability criterion can pose. If the land up for rezoning is poor for farming, its owner has the equity argument on his/her side. "Don't force me to keep in an agricultural zoning district a parcel that isn't economic to farm." However, development on such land may jeopardize the viability of farming on adjacent land (Commissioner "C's" point) or create fiscally inefficient leap-frog growth (Commissioner "D's" warning). Our research on Iowa's Black Hawk County found that farmability, as measured by parcels' Corn Suitability Ratings, tended to be the single most important criterion (see Case Study Report Number 6). However, since a lot of poor land was found far from towns and/or next to rich land, sticking strictly to the farmability criterion risked the two negative impacts about which the two quotations above warn. A third Weld County Commissioner was also concerned that development on



poor farmland could be contrary to the public interest, (i.e., if it promoted urban sprawl) and indicated he would subordinate the farmability criterion to his concern for orderly urban growth.

Another dilemma posed by the farmability criterion arises when the land adjacent to expanding cities is good farmland. As discussed in this report's first section, urban growth in Weld County has tended to be concentrated in areas of prime land. The same pattern has occurred in California's Stanislaus County. In both, the major cities cannot expand in a compact, contiguous fashion without eating up good land. As discussed in our Stanislaus report, one or more sides of a city may have land that is relatively less prime and city authorities may be encouraged to channel growth in that direction (see Case Study Number 3). Greeley has been expanding mostly in a westward direction, where the land tends to be less productive than to the north or east. However, some city leaders believe that the westward bias cannot continue indefinitely and growth to the north would be desirable. One argument offered to justify going north was that it was becoming energy-inefficient to provide services to a population stretched out east-to-west.

However, the land to the north tends to be excellent for farming. Those interests opposed to Greeley annexing northward have no regulatory mechanism to work through except the city's own land-use authorities. There is no review agency comparable to California's LAFCOs (Local Agency Formation Commissions), and the County has no veto or postponing power over annexations. Moreover, no effective consultative mechanism has developed. According to one knowledgeable County official, "Towns don't tell us and ask for advice when they're going to annex. They just do it."<sup>20</sup> On the other hand, there has not been the kind of large-scale annexations of vacant land which we observed to be undermining farmland preservation efforts in Black Hawk County (see Case Study Number 6). Yet, there is no LAFCO-type agency to restrain such behavior. Nor is there in the politics of Greeley the restraining, slow-growth body of opinion which we found in Modesto, the principal city of Stanislaus County. Weld's Ag. Council has gone on record as opposed to Greeley expanding to the north, but few if any of its constituents vote in Greeley.

In another contrast to Stanislaus, Weld's planning policies do not require nonagricultural development to annex to municipalities, but to locate "adjacent" to them. For almost all of Weld's towns, an annexation requirement would not be feasible. Being so small, they offered to developers

too few contiguous parcels with the right physical characteristics and/or with tolerable prices. Limiting development to contiguous parcels (or to land connected to such parcels) of course tends to give such land a considerable advantage in the market. Under Weld's policy of "adjacent" development, builders could look for parcels up to a mile out and, according to Table 4-1's data, have a high probability of securing rezoning from the County.

How "adjacent" must development be? When we interviewed the five Weld County Commissioners on this subject, we found that their concepts of "adjacent" differed significantly, differences reflected in the varied distances from town of the parcels they rezoned. At one end of the spectrum was a single Commissioner who preferred residential rezonings to occur only contiguous to a town. Five of the 24 approvals were contiguous to, or separated by only a narrow strip from, a town. At the spectrum's other extreme was another Commissioner who was content if the development occurred within a town's planning area. As discussed above, 21 of the 24 approvals meet this standard. Two other Commissioners fixed outer limits to their preferences for close-in locations: for one it was no more than half a mile, and nine approvals were so located; for the second it was up to 1.5 miles, and about 19 met that standard. The fifth Commissioner set the constraint in terms of time rather than distance: she wanted the development close enough so that annexation within two years was likely. That one of her colleagues who preferred an outer limit of half a mile expected annexation to come almost immediately or "in a short time." Two other Commissioners also desired annexation as a consequence of adjacent-to-cities rezonings. However, the County could not insist on the towns annexing. While Greeley has reportedly been cooperating in this respect, it may shortly reach its sewage-treatment capacity. And it may not be able to expand that capacity if fiscal retrenchment in the Federal Government dries up grants for such purposes.

Even if annexation does not materialize, a close-in location for subdivisions tends to represent a public-finance savings over some remote location. Busing their children to school should involve less distance and less cost. Driving to and from work and shopping should be over relatively fewer miles of public road and, therefore, be less costly in maintenance. The adjacent subdivision may tap into the city's water and/or sewer system and thereby make more efficient use of existing public investments. The same town's parks and library should be available to use by the subdivision's residents, and for the library a user's fee (charge for borrowing privileges) may be levied.



Have Weld County zoning authorities applied the same criteria to commercial and industrial rezonings as to residential? When we asked this question of the County Commissioners, we received "yeses" regarding commercial projects, but two "nos" for industrial proposals. "Clean," "well-designed," and/or high-employing industries need not be adjacent. The ideal factory, in the eyes of Weld County Commissioners was one which neither polluted the air or water nor consumed a lot of water, since water for agricultural and residential uses has been in scarce supply. At the time of our field research in the spring of 1980, the electronics firm Hewlett Packard was negotiating for a site 1.5 miles west of Greeley; and county officials appeared eager for the project to materialize.

As this Hewlett Packard project suggests, a firm rule limiting rezonings to just a half mile or one mile from municipal boundaries would not be in the public interest. Not enough suitable sites may be available in that narrow a band for all the industrial and even residential development which County authorities may find desirable. However, permitting growth too much and too often beyond a mile invites fiscally inefficient sprawl and opens more irrigated and other good farmland to the negative impacts of adjacent nonagricultural development than if growth were concentrated around cities. Where to draw the line? At the outer boundaries of the towns' planning areas would not work, because those areas may legally extend out from corporate borders three miles or more. One of the County Commissioners whom we interviewed and, also, two senior officers of the planning staff recognized as a potential problem that cities might plan beyond their capacities, extending their planning areas out too far and endorsing development projects for locations towards the peripheries of those overextended areas. These three officials contended, however, that the County would tend to deny rezoning for such projects, on the grounds that the cities could not, in a reasonable time period, extend public services to the sites. Our interviews with other County Commissioners confirmed that the Board as a group shared the concern that new developments be served and annexed, immediately or fairly soon, by municipalities.

#### IV. IMPLEMENTATION: PLANNING STAFF DISCOURAGE REZONING APPLICATIONS

The Weld County case study allows us to explore the hypothesis that the zoning administration staff discourages applications for rezonings that would be incompatible with the county's growth management policies. Where such



discouragement takes place, the tally of rezoning approvals versus denials does not clearly show the effectiveness of those policies. Among the cases decided, there may be relatively few denials, not because the County fails to implement its stated policies, but because few petitioners bother to challenge those policies. In this report's third section, we assessed the policies' implementation largely through studying the characteristics of the approved rezonings and looking to see if they were compatible with the 1973 Comprehensive Plan. Here, though, we can speculate about the likely denials which the zoning staff's discouragement efforts denied.

As in most zoning administration contexts, persons interested in rezoning land in Weld County tend to approach the staff for a preliminary discussion of their likely chances of success. The Weld staff have been willing to assess those chances, sitting down with the potential applicant to discuss, among other factors, the location of his parcels relative to a town, that city's planned use for the area, and its timing for utility extensions to the vicinity of the parcel.<sup>21</sup> In the opinion of one experienced staff member, "After being explained what the policies are, a lot of people will walk out the door and decide not to file an application." Another staff member gave a sample explanation:

It's going to depend very much on exactly how close that piece of property is to a community. If close enough, has that community done some master planning? Does this community have that property in its map scope, and has it said that it's going to be residential or industrial? And does it tell us the timing of utility extensions, and that the community wants the proposed development?....

If a piece of property is not within a municipality's planning area, and it's not a development which the municipality wants, we'll say that there's a low chance of getting our {the staff's} approval.

We don't purport to speak for the Planning Commission or the County Commissioners. However, they have generally, 95 percent of the time, followed our recommendation on something like this.

This claim was not far from the mark, at least for the 29 rezoning cases we studied for the period mid-1977 to the end of 1979. As Table 4-2 indicates, the Planning Commission's recommendations to the County Commissioners agreed with the planning staff's recommendations in 90 percent of the cases; and the Commissioners agreed with the staff also in nine out of ten cases. This high degree of agreement between the planning staff, on the one hand, and both the Planning Commission and County Board of Commissioners, on the other, may result from the lay decision-makers following the lead of their professional staff or the latter anticipating the likely decisions of the citizen commissioners, or some combination of those two processes. When we interviewed the staff, we found that their perceptions of the County Commissioners' rezoning criteria tended to match what we found from interviewing the Commissioners. One staff member observed that the Commissioners were sympathetic to compacting growth because of "headaches they got regarding roads. The largest group of people complaining about roads are those in rural subdivisions and those with small scattered one-to-five-acre lots. A 50-acre subdivision is going to put 50 more houses out there, and 50 more families complaining about roads certainly helps the planning cause considerably." <sup>22</sup> Another planner said, "From what I've seen, the most acceptable reason for denying it {a rezoning} is that in the long run it's going to save us money as taxpayers." <sup>23</sup> The planners have probably contributed to the acceptability of the fiscal impact argument for compacting growth. However, whether they are leaders in policy making or are anticipators, they can predict well what the political decision-makers will do and, hence, have the standing to discourage rezoning petitions likely to fail.

However, the Planning Department did more than just anticipate decisions. Among its important contributions was to promote use of the decisional criteria found in the 1973 Comprehensive Plan. The Department formally communicated its recommendations to the Planning Commission in a two-or-more-page, single-spaced report. Rather than restricting its reasons for and against to a one or two paragraphs at the report's end (as one other Planning Department we studied tended to do), the Weld planners devoted almost all of the two or so pages to straightforward arguments for approval, against, or for continuing the case until needed additional information was obtained. Consistently conspicuous among those arguments were appeals to the 1973 plan's policies for locating growth adjacent to cities and according to those town's plans and preferences. The Weld Planning Commission tended to adopt its planners' arguments as its own and to

Table 4-2

PLANNING STAFF, PLANNING COMMISSION, AND  
BOARD OF COUNTY COMMISSIONERS DECISIONS :

REZONINGS FROM AGRICULTURAL USE: July 1977 to December 1979

Planning Staff Recommendation	Planning Commission recommendation			County Commissioners' Decision	
	<u>Approve</u>	<u>Deny</u>	<u>No recomd.</u>	<u>Approve</u>	<u>Deny</u>
Approve	<u>22</u>	1	0	<u>22</u>	1
Deny	0	<u>4</u>	1	1	<u>4</u>
No Recommendation	1	0	0	1	0

% agreement: staff with Plan.  
Commission (26 or 29 cases) = 89.7%

% agreement: staff with County  
Commissioners (26 of 29 cases) = 89.7%

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Source: same as those for Table 4-1



report them to the Board of County Commissioners with few significant changes in wording. Hence, the main written information received by the Board stressed decision making in terms of the 1973 plan.

Another group besides the Weld County planning staff which could credibly discourage rezoning petitions consisted of realtors experienced with sales of land in rural areas. We asked the Board of Realtors for the names of such persons and received four. Added to them was one Greeley banker also recommended for his knowledge of the rural land market. We asked each of these five to characterize the County's policies on residential rezonings from agricultural use. All five responded that such rezonings were not easy to obtain, with one believing that approval would be difficult if the site were two to three miles from the nearest town, another contending that the County restricted new subdivisions to areas "surrounding" existing towns, a third reporting that the County wanted developments close enough to be served by municipalities, and another arguing that a far-from-town location would probably be rejected unless the proposed development was fairly small (about 20 to 30 acres) and the land was not prime. These responses suggest that the private sector had relatively accurate perceptions of the County's zoning policies and, therefore, might very well discourage petitions likely to fail. We must add the qualification, however, that two of these five experienced realtors/bankers believed that someone with political clout could circumvent the rules. On the other hand, such persons may be rare. Our survey of rezoning decisions for the period mid-1977 to the end of 1979 indicated very few obvious departures from the criteria set in the 1973 Comprehensive Plan.

#### V. IMPLEMENTATION: REGULATION OF PARCEL SPLITTING

County decisions on parcel splitting appear not to have been as consistent with formally stated policies as was its regulation of rezonings. The County's Zoning Resolution (i.e., zoning ordinance) sets 80 acres as the minimum-size parcel for a building lot on agriculturally zoned land which is irrigated and 160 acres on non-irrigated "A" -zoned land. However, the Official Subdivision Regulations permit exceptions to the 80-160 rule, so that "non-productive agricultural lands may be developed for higher or more productive uses, in-so-far as such uses are compatible with surrounding agricultural uses in areas where such land divisions are proposed" (Section 9-2 of the Regulations). These exceptions have been termed "recorded exemptions" (i.e., exemptions from the normal subdivision process) and are restricted to divisions of parcels into only two parts and to land which has not been split within the previous

five years. Owners must apply to the Planning Department which, in turn, makes a recommendation to the Board of County Commissioners; the Planning Commission is not involved.

As Table 4-3 indicate, we found 58 cases for calendar 1979 in which the County Commisssoners decided on applications for recorded exemptions. All but one of the 58 were approved. The Planning staff had recommeded denial for eleven cases, but the Board agreed with the recommendation for only one case, involving a split of ten acres into two parcels of approximately five acres each. The Subdivision Regulations required an agricultural justification for such a split, and the planning staff could find none in this case, which proposed creating two parcels too small to farm. The staff tended to recommend for approval splits where, because of poor soil, small size (before the parcel is divided), and other reasons, the land had "a low utility for agricultural use." This basis for approving a split was clearly consistent with the section of the Subdivision Regulations quoted on the previous page.

Other compatible justifications developed by the planning staff to support recommendations for approval were that (a) the "request will allow agricultural and related uses to be the predominant land use" (e.g., the applicant wants to build a house for his daughter on a 20-acre parcel, leaving the other 138 acres to be farmed); (b) "there will be no reduction in the amount of land currently being used for agricultural production" (e.g., someone wanted to sell the farmhouse and outbuildings on a 10-acre parcel separate from 162 acres of farmland, on the grounds that the purchaser lined up to buy the 162 acres lived on a nearby farm and needed neither the house nor the other improvements on the 10 acres); and (c) the proposed new parcels would be "compatible with surrounding agricultural use" (for example, severing a parcel for a son or other person working on the farm to build his home).

The planning staff tend to approve also cases where additional residences will not be built, such as where two homes sit on a farmstead, the land's owner has been renting out one, and he wants now to sell it. A similar situation is, as alluded to in the preceding paragraph, where a farmer wants to expand his holdings, a nearby farm is available for sale, but he wants to avoid spending the money involved in acquiring a farmstead and outbuildings he does not need. In fact, he may not be able to afford the purchase if those buildings must be included. Forcing farm sales to include them makes little sense, in terms either of farm economics or of the political careers of County Commissioners.

Table 4-3

PARCEL SPLITS  
 AUTHORIZED UNDER WELD COUNTY'S  
 RECORDED EXEMPTION PROCESS: CALENDAR 1979

	<u>Approval</u>	<u>Denial</u>
1. <u>County Commissioners' decisions</u>	57	1
a. Aver. distance from nearest town	2.1 miles	1.5 miles
b. No. of cases within one mile of nearest town*	17	0
c. Aver. size of the smaller of the two proposed parcels	6.1 acres	4.8 acres
d. Aver. size of the larger	86.8 "	5.5 "
e. % of cases in which larger parcel exceeds 100 acres	39%	0
f. % of cases in which larger parcel exceeds 50 acres	70%	0
2. <u>Planning Staff recommendations for</u>	47	11
a. Aver. distance from nearest town	1.9 miles	3.8 miles
b. No. of cases within one mile of nearest town*	17	0
c. Aver. size of the smaller of the two proposed parcels	6.6 acres	3.9 acres
d. Aver. size of the larger	93.2 "	52.4 "
e. % of cases in which larger parcel exceeds 100 acres	45%	9%
f. % of cases in which larger parcel exceeds 50 acres	72%	55%

Sources: same as for Table 4-1.

Note: \*Locational data were missing on four cases.



Another category of cases which is also difficult politically to deny, but which may be less justifiable agriculturally, is where a parcel is to be created as a homesite for a son or son-in-law who ostensibly will work on the farm. There is nothing to stop the landowner, once the split is approved, from selling the parcel to someone outside the family. And, of course, the son or son-in-law is not legally bound to help work the farm. We queried members of the Weld County Planning Department on this potential problem and were told, "We've looked back in the records to see what has happened and found that it's not been a high occurrence."<sup>24</sup> Some people have abused the record exemption process in this way, but to close the loophole would be politically difficult and probably legally impossible. It would be politically risky to question a farmer's word that a son or other close relative did intend to work on the land, and no written prohibitions on selling the land out of the family would likely hold up in court.

While the splits which the Planning Department recommended normally had the kinds of agricultural justifications discussed above, at least two did not; nor did the ten which the Department proposed be denied and the County Commissioners approved. The two exceptions among the planning staff's recommendations which we found involved the creation of small (1.3 acre and less) parcels for building sites which were in the planning areas of two towns. At least five of the ten cases where the County Board ignored the staff recommendation concerned splits for residential building where the land in question was farther from town, between two and 8.5 miles. We lacked complete data on the other five, except we know that the planning staff did not report any agricultural justification for them.

Why did the County Commissioners approve almost all the parcel splits presented to them including ten which their professional staff recommended to be denied? Table 4-3's analysis of parcel size and distances from town indicates significant differences between the petitions which the planners recommended and those eleven they asked to be denied, but differences which the Commissioners apparently ignored. The land proposed to be divided tended to be closer to town (and to services used by the residents who would build on the lots created) for the 47 cases presented for approval than for the denials: 1.9 miles on average as opposed to 3.8 (see line 2a of Table 4-3). Moreover, at least 17 of the 47 "approvals" were within one mile of the closest town, while none of the eleven "denials" was that close. The approvals tended to have the advantage also in terms of

the average size of the parcels proposed to be formed. The larger the residual parcel (i.e., the one not severed for just residential use), normally the better for the split's impact on agricultural production. As line 2d of Table 4-3 indicates, the 47 cases recommended for approval averaged 93.2 acres for the larger of the two proposed parcels, as opposed to 52.4 acres on average for the eleven "denials." Forty-five percent of the "approvals" had residual parcels exceeding 100 acres, and for a total of 72 percent the larger was more than 50 acres (lines 2e and 2f), whereas for the 11 denials only one case had a residual parcel over 100 acres and 55 percent had ones exceeding 50 acres.

When we interviewed the five County Commissioners about how they dealt with parcel splits under the recorded exemption process, we found them unhappy with the process or unable to find consistency in it:

It is pretty hard to understand this process because there is too much politics involved. {Politics in what sense?} In the philosophy of the commissioners. (Commissioner "A").

I suppose that it must be admitted that some of those decisions {regarding splits} have to be subjective...{and} some of the problems are philosophical. (Commissioner "B").

I'm not sure we are drawing the line at the right place or not. We still have in our planning, if we stay tight with what the regulations say, that we won't have a place for people who want an acreage and want to work, have a big garden, a place for horses. And I still ask if this is what people want, in the long run is it right for people, if they can afford it...? (Commissioner "C").

If there is a family there and they absolutely tell us that they are going to stay there and farm it like it has for years, {we tend to approve it}. However, there is going to be a new house there; that's going to provide problems....{and we hope} they won't take it {the land} out of production; only put in a new house or a new residence." (Commissioner "D").



You have a hard time when you have a farmer who's been farming a block of land for years and now wants to retire, but he doesn't want to move so {he severs the farmstead and the rest of his} land goes to another farmer, but by your policy that land is always available for another building. In essence, you could create two buildings where there was one. (Commissioner "E").

The last two Commissioners cited ("D" and "E") are worried about the consequences of granting splits to retiring farmers and to farm families, but see no way of coping with the dilemma. Commissioner "C" faces a larger dilemma; he is not sure that even parcel divisions proposed to aid nonfarmers should be denied. He appears on the verge of ignoring the stated intent of the recorded exemption process. On the other hand, we can sympathize with his dilemma. According to the realtors we interviewed, there has been a strong demand for rural parcels large enough for just the kinds of activities Commissioner "C" describes, but not adequate for commercial farming. And Commissioners "A" and "B" find the record exemption process "hard to understand," "subjective," and marked by "philosophical" differences. We did not obtain the same kinds of responses--indicating such discomfort and divisions--when we asked the Commissioners about the rezoning process. We conclude that splitting decisions are substantially more difficult for them to handle. Why? Probably in part for the same reason that they approved almost all of the proposed splits: it is hard to say "no" to a local person who wants to exercise his "constitutional" right to property by creating just one new parcel. A ten-or-more-unit subdivision or some industrial or commercial project tends to involve enough public risks (e.g., increased cost of services, injury to surrounding farming) to motivate the Commissioners to assume the usually distasteful role of saying "no".

On the other hand, to Weld County's credit, "no" has been said to any landowner who seeks more than one split per five years. In Stanislaus County, California, up to three additional parcels can be carved out of a piece of land every five years (see Case Study Number 3). Moreover, we were assured, both by planning staff and realtors, that this limitation is enforced in Weld. When someone applies for a parcel division, the Planning Department conducts a title search on the land involved. If that search indicates a division within the past five years, the split is denied. In addition, the divisions emerging from the Weld County recorded exemption process appear to be not too disruptive



of viable farming, at least that is what our 1979 sample indicates. On average, the smaller of the two parcels authorized in the 57 cases for 1979 was only 6.1 acres while the larger averaged 86.6 acres (see lines 1c and 1d of Table 4-3). Almost 40 percent of the larger parcels exceeded 100 acres in size, and 70 percent were over 50 acres (lines 1e and 1f).

#### VI. POLITICAL COSTS

Being relatively permissive within a rather strict framework for parcel splits (only one new lot per five years) may be a necessary political trade-off for retaining both that strict framework and also the County's rezoning policy of concentrating growth. Both of those policies did not appear, when we conducted interviews in March and April 1980, to be in any serious political trouble. County Commissioners and most of the realtors and farm leaders whom we interviewed claimed to be satisfied with these general policies. None of them believed that either the general policies or their specific applications had ever been the cause of a County Commissioner to win or lose an election or for a planning staff member to be fired or demoted.

Only one of the five realtors/bankers interviewed had a substantive suggestion which clashed with the County's major growth management policies. He advocated opening more of the county's "bad farmland" for residential development. However much or most of such land would be far enough from towns to jeopardize the compacting-of-growth policy. The other four were apparently satisfied with the development opportunities afforded under the County and the towns. Greeley, in particular, offered a lot of land for expansion; and the County was permitting developments close to the City. If Greeley were to adopt a slow-or no-growth stance, pressures might be applied to the County to be more permissive. We noted the same kind of relationship between Stanislaus County and the City of Modesto. The political pressures on the county were low as long as not too many developers were disappointed by opportunities available in the city (see Case Study Number 3).

The six farm leaders whom we interviewed were recommended by a County Agent of long experience in Weld. The six included the Presidents of the Ag. Council and of the Farm Bureau and, also, a high official of the Farmers Union. Five of the six contended that they were generally satisfied with the County's policies regarding farmland. In explaining his position and that of other farmers, one said:

One of the reasons why farmers are willing to compromise property rights is because of Boulder, Larimer, and Adams counties to the west and south {Counties which as he had discussed earlier in the interview, had "succumbed" to development pressures, to the detriment of agriculture.}

Another farmer leader explained his support of the County's policies in terms of how they protected him from "neighbor's" surprises." By compacting growth around cities, the County put distance between most farmers and the kinds of nonfarming families who tend to complain about smells and in other ways try to restrict normal farm operations. A third supportive farm leader also pointed to protection from nuisance problems, but stressed preservation of irrigated water rights for farmers. He feared that, through residential development, enough water could be diverted to serve subdivisions that ditch companies would have too few farmer customers to maintain service to some or many ditches.

Another leaders was also worried about declining water availability and blamed the Federal Government for encouraging urban development that competed for water with farmers. According to him, "All along route 85 {the County's main north-south route} there are many, dozens of big farms, some already selling out because they want to get out before the water disappears." He mentioned one expanding community, Northglenn, which was offering high prices for water rights in his part of the County. However, that town could not expand, this farmer contended, without a \$6.95 million sewage treatment facility grant promised by the U.S. Environmental Protection Agency. He and fellow farmers in the region were then trying to fight Northglenn in court.

Only one of the six farmer leaders opposed the County's growth management policies. Like the previous farmer, he questioned how effective land-use policies can be in protecting prime farmland when the water that makes the land prime is disappearing. Another question which he posed was whether it made sense to preserve land for farming when the prices farmers received for their products were so low relative to the costs of production:

Technology, farm organizations, and farming methods are making U.S. farmers go broke. In south Texas last week, people were plowing up carrots, cabbage, and onions because there is no market for it.



His third argument for opposing the County's zoning policies was, "People should have the right to sell to developers after they've worked hard all their lives."

However, many if not a majority of his fellow farmers in Weld County supported the policies of compacting growth around cities. The five other farm leaders we consulted gave us that assessment. The reasons for farmer support included those discussed earlier in this section of the report. Another reason or set of reasons, we suspect, derive from the County's permissiveness regarding splits. Farmers know that they normally can sever a parcel for a son or son-in-law and daughter to build on or that, if they want to add to their holdings by buying a neighbor's land, they need not purchase the farmstead and other buildings or that, when they retire, they can keep their homes and sell off the rest of the farm. If these parcel splits were not allowed, farmer opposition to the 1973 plan and accompanying ordinance may well have been intense. During the discussions in 1972-73 about amending the ordinance, the Ag. Council strongly opposed a proposal to limit any parcel created in a split to a minimum of 20 acres. The farmers wanted the flexibility of a one-acre minimum, and the Planning Commission agreed. <sup>25</sup>

#### VII. LEGAL CHALLENGES

Two court suits have challenged rezoning decisions affecting A-Agricultural land. One, Lee Wieck and Joyce Weick vs. The Board of Commissioners of the County of Weld, was decided against the County in a ruling by the District Court for Weld County on April 7, 1980. The plaintiffs wanted to rezone about 58 acres located one and one-half miles northeast of the town of Erie from A-Agricultural to E-Estate use, for the purpose of developing the tract into 33 single-family-home lots. On November 1, 1978, the County Commissioner voted four to one to deny the rezoning, giving as their reasons four recommended by the Planning Commission: <sup>26</sup>

- (a) The Weld County Comprehensive Plan recommends new residential development be located adjacent to municipalities and/or serviced by municipal services.
- (b) The plan discourages new developments which do not comply with the above.
- (c) Prime Agricultural Land should be preserved for agricultural use.



- (d) The Planning Commission rejected the Plaintiffs' contention to the effect changing conditions justified the new rezoning requested.

Indirectly, the Court endorsed these reasons as valid for deciding a rezoning case in Weld County but found fault in how the Commissioners applied them to this particular property northeast of Erie. In the previous year, in 1977, the County Commissioners had approved rezoning for a parcel of land located immediately to the south of the Wieck land. The Court noted this action and found that the principles of locating residential development next to cities and of preserving prime land "applies equally" to the land rezoned in 1977. The location was substantially the same, and apparently the land had about the same productivity potential. The Court concluded that, in approving the one rezoning in 1977 and denying the other in 1978, the Commissioners were "arbitrary and capricious." And the Court overturned the November 1978 denial.

In the second case, Charles Hobday vs. Board of County Commissioners of Weld County, the District Court judge (for Weld County) decided in favor of the Commissioners on May 8, 1979. The plaintiff Hobday owned about 39 acres located 2.5 miles west of the town of Hudson and sought rezoning from A-Agricultural to B-Business District for a tourism project. The land was oddly shaped (a long, narrow triangle) and otherwise not prime for farming. On September 13, 1978, the Commissioners denied the rezoning on a close vote, three to two, giving as their reasons again the arguments found in the Planning Commission's recommendation on the case. They included that the parcel was not assured of adequate water supply for the proposed tourism project and that a business rezoning that far from town would amount to "spot zoning" and establish a bad precedent. Hobday went to court, alleging that the Commissioners had exceeded their discretion and that the denial was "arbitrary, capricious, {and} without foundation in fact or law..."<sup>27</sup> The District Court dismissed all of these allegations.

In the Hobday case, the County said "no" to a far-from-town commercial development; and the Court upheld the County. The Wieck case suggests that the Court would be supportive also of compacting residential growth, if the Commissioners were consistent in their own rezoning decisions. In fact, the Court examined the 1973 plan's policies of locating growth next to cities and of preserving farmland and implied that they were legitimate objectives in zoning.

### VIII. IMPACTS ON LAND PRICES

We asked four realtors and one banker reputed to be knowledgeable about the rural real estate market to assess the impact, if any, of County zoning policies on the prices of rural homesites. One of the five responded that he believed there was no significant impact, while the other four contended that there was. One of those four said: "Supply and demand is still the basis of our economy, and county policies have diminished supply through their restrictions." He believed that, despite the lots of record and the new rural homesites being permitted by the County (through parcel splits and the few subdivisions), supply was not satisfying demand. In his estimation, the impact on homesite costs attributable to the zoning restrictions was 10 to 25 percent "since the early 1970s." Two of his colleagues, however, estimated that in the same period those restrictions by themselves (i.e., with other inflationary factors excluded) raised prices by 100 percent or more. A fourth respondent also believed that the County's zoning had inflated prices, but he would not estimate by how much.

What was the social impact of the zoning-induced rise in land prices? Were certain income groups excluded from living on rural homesites which previously had been able to afford such sites? Alternatively, "country living" had in the past been the province only of the well-to-do, so that the inflation impact of the zoning policies had the effect only of "taxing" the relatively rich rather than excluding the middle class. For example, in Black Hawk County, we found that the minimum lot size for rural lots had been three acres for some years before the introduction of the new zoning program to protect prime farmland (see Case Study Number 6). That three-acre minimum had already tended to exclude much of the middle class. In Weld, the minimum had been more affordable, an acre, allowing proportionately more skilled workers and other middle-income earners to buy. However, by 1980 rural lot prices had become too expensive for "the majority of the young people to afford" (said one realtor), beyond the reach of "part of the skilled labor force" (according to another), or less affordable to the working man "today than five years ago" (believed a third). These responses indicate that the middle class had not been entirely excluded from, but was significantly less competitive in, the market for rural homesites. And, as discussed above on this page, part of the price inflation responsible for narrowing the social range of buyers can probably be attributed to the County's zoning restrictions.



Is this at least partial exclusion of middle-income families from living in rural areas justified by the benefits resulting from the exclusionary effect? We assume that without the zoning restrictions, there would be more people living on scattered rural homesites, requiring school-bus, road-maintenance, and other public services at costs exceeding the levels that would prevail if those people were not so dispersed. Our assumption that there would be greater scatter is based on the realtors' report that the County's policy of compacting growth around cities was not satisfying the market: buyers wanted more homesites, presumably at least in part outside the close-to-town areas preferred by the County. A second type of benefit (besides economizing on public service costs) is likely to be reducing the negative impacts or residential development of adjacent farming. The fewer the nonfarm families living in farming areas, as opposed to being adjacent to existing subdivisions in or near a town, probably the fewer conflicts with farmers that impact on yields and production costs (e.g., vandalism of crops, equipment, or irrigation ditches; complaints about smells, dust, spray, or noise that force farmers to alter practices so that costs increase and/or yields decrease). We could not quantify these benefits, nor could we measure the "costs" of excluding part of the middle class from rural living. All that we are attempting in this analysis is to suggest to zoning authorities that such costs may occur (as they appeared to have in Weld County) or may not occur (the example of Black Hawk County in Iowa), but that where they do seem likely, decision-makers may be able to justify them in terms of such offsetting benefits as (a) savings in public service costs by compacting growth and (b) reducing residential-agricultural land-use conflicts, also by compacting development.

#### IX. PROGRAM'S COSTS TO GOVERNMENT

The costs to government starting up and administering a growth-management program like Weld's do not seem great. According to the Planning Director of the 1971-73 period, the professional staff work for the new comprehensive plan was not costly, because he relied entirely on his own staff, and several of the key contributors to the work on the plan were student interns. The day-to-day administration of the growth policies has been in the hands of the zoning administrators, who in the spring of 1980 numbered one chief administrator and two assistants. Another cost element was staff time working with towns in the County which lacked adequate personnel to develop their own land-use plans.



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Until recently, "701" money from HUD enabled Weld's Planning Department to hire staff for providing such assistance. A minimum amount of town planning was needed for the County's growth management policies to work smoothly. As was discussed above, the County wanted new growth to be located within or just adjacent to the towns, so that the latter had to plan for coping with such growth. With the decline in "701" funding and no substitute on the horizon (such as the planning assistance funding which the Jeffords Bill would have provided), counties which hope to follow a Weld-type (or Stanislaus County-type) growth-compacting strategy may be disadvantaged, unless their municipalities happen to have the resources of their own for effective planning.

## NOTES

1. Colorado, Dept. of Agriculture, "Agricultural Land Conversion in Colorado: Executive Summary" (Denver, 1979), p. 2.
2. Ibid.
3. U.S. Dept. of Commerce, 1974 Census of Agriculture, Vol. 1, Part 6, Colorado: State and County Data, p. 356,
4. Ibid., p. 355.
5. U.S. Bureau of the Census, "Unofficial Census Figures for Review Purposes," for Weld County, Colorado.
6. Ibid.
7. Ibid.
8. Weld County, Comprehensive Plan (Greeley, Colorado, September 1973), p. 37.
9. Kenneth B. McWilliams, "An Analysis of the Residential Subdivision Development Pattern in Weld County, Colorado - 1965 through 1977" (A thesis submitted to the Faculty of the Graduate School of the University of Colorado...Department of Geography, 1978).
10. Comprehensive Plan, op. cit., pp. 48-9, 64-5.
11. Office of the Planning Commission, Weld County, Colorado, Official Zoning Resolution (Greeley, Colorado), Sec. 81.6.2.1.
12. Office of the Planning Commission, Weld County, Colorado, Official Subdivision Regulations (Greeley, Colorado, revised April 1974), Sec. 9-4.
13. Stanislaus County, California, Zoning Ordinance (Modesto, California, January 3, 1980), Sec. 9-112.f.2.
14. Interviews with these persons, Weld County, Colorado, March and April 1980.
15. Ibid.
16. Ibid.
17. Interview, Weld County, March 1980.

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18. Interviews, Weld County, March 1980
19. Interview, Greeley, Colorado, March 1980.
20. Interview, Greeley, Colorado, March 1980.
21. Interview with three staff members of the Weld County Department of Planning Services, Greeley, Colorado, March 1980.
22. Interview with a staff member of the Weld County Department of Planning Services, Greeley, Colorado, March 1980.
23. Ibid.
24. Ibid.
25. Interview with a member of that council, Weld County, Colorado, March 1980.
26. In the District Court in the County of Weld, State of Colorado, Civil Action No. 30261, Division F, Lee Wieck et al., vs. The Board of Commissioners of the County of Weld, State of Colorado, Findings and Orders, March 1980, p. 2.
27. In the District Court in and for the County of Weld, State of Colorado, Civil Action No. 30172, Division I, Charles Hobday vs. Board of County Commissioners of Weld County, State of Colorado, Complaint Pursuant to Rule 106, CRCP, October 1978, p. 2.



## Case Study No. 5

### CONDITIONAL USE AGRICULTURAL ZONING IN MARION COUNTY, OREGON

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## Case Study No. 5

### CONDITIONAL USE AGRICULTURAL ZONING IN MARION COUNTY, OREGON\*

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#### I. INTRODUCTION: THE SETTING

Marion County, Oregon, occupies 746,240 acres of the Willamette River Basin in northwest Oregon. Contained within the county is the City of Salem, which is the state capital, county seat, and largest incorporated municipality, with a 1980 population of 90,061.<sup>1</sup> This valley is bounded on the west by the Oregon Coastal Range, and on the east by the Cascade Range. The County measures from 12 to 72 miles wide (east to west) and from 10 to 41 miles long (north to south).<sup>2</sup>

The area produces a wide array of agricultural products for market. Some of the major crops are: berries, cherries, peaches, apples, filberts, snap beans, sweet corn, onions, and grass seed. There are also significant livestock and dairy industries and farm forestry and nursery stock operations.

Agriculture is the leading industry in Marion County's economy, and it is a major user of the County's land resources. Marion is also the leading farm-revenue-producing county in the state.<sup>3</sup> According to the preliminary results of the Agricultural Census of 1978, the total value of agricultural products sold in Marion in that year was \$123.6 million. The 1978 Census found 307,866 acres of land in farms (41% of the total acreage); and of this total, 188,471 acres (25% of total acreage) were harvested cropland,<sup>4</sup> and about 190,000 acres (or 25%) consisted of prime agricultural land.<sup>5</sup>

However, during the past twenty years, the County has experienced both substantial population growth and a considerable reduction in the amount of land devoted to farming. According to the results of the preliminary census of 1980, Marion County has a total population of 199,003 (170 per sq. mi.).<sup>6</sup> This compares with a 1970 population of 151,309 (128 per sq. mi.)<sup>7</sup>, and a population in 1960 of 120,888 (103 per sq. mi.).<sup>8</sup> Therefore, there has been a population

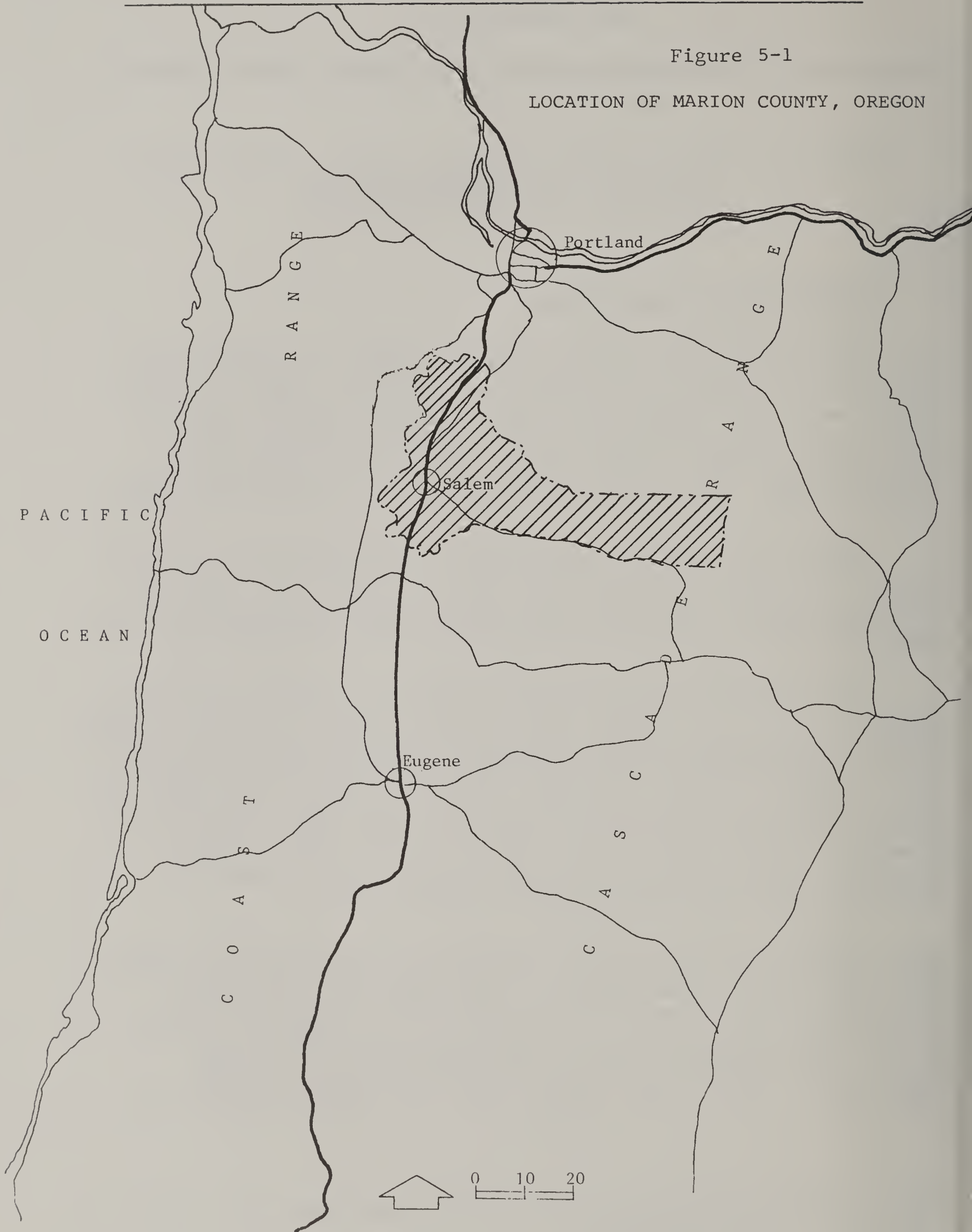
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\* Most of the field research for this case study was carried out by J. Scott McDonald.



Figure 5-1

LOCATION OF MARION COUNTY, OREGON



increase of 65% between 1960 and 1980. In addition, in 1959 farmland acreage was 351,402 acres.<sup>9</sup> As mentioned earlier, in 1978 there were only 307,866 acres in farms. This represents a decrease of 12%.

The pattern of population growth was similar to that in many other areas of the United States. Development was proceeding outward from urban areas in a rather scattered manner, leaving much undeveloped land in its wake. In 1968 about 26% of the land area within Salem's incorporated limits was vacant or unused.<sup>10</sup> However, in spite of the existence of this developable land, urban-type development extended beyond the corporate limits. County-wide in 1970 and 1971 approximately 940 and 1,380 acres, respectively, of unincorporated land were subdivided for residential purposes.<sup>11</sup>

According to a former chairman of the Marion County Planning Commission, a major cause of this urban sprawl was the existence of very permissive zoning: "This county {Marion} suffered under very broad, general zones. We had these creatures called RA {Residential Agricultural} and RAR {Residential-Agricultural-Recreational}. There was never any limit expressed in the zoning ordinance. A person could very legitimately request that his 20 acres be divided into one-acre parcels in the same zone where someone wanted to keep 30-40 acres in farmland. Those zones have been converted to more appropriate zones with specific uses."<sup>12</sup>

The following section will look at the actions that both the state of Oregon and Marion County have taken to curb urban sprawl.

## II. POLICY RESPONSES TO URBAN SPRAWL

### A. The Statutory Context

Beginning in October 1973 Oregon state law required all counties and municipalities to (1) prepare and adopt comprehensive plans consistent with designated statewide land-use goals and (2) to enact zoning, subdivision, and other ordinances to implement the comprehensive plans (see Ore. Rev. Stat., Ch. 197). This legislation, known as Oregon's Land Use Planning Bill (Senate Bill 100), provided funds to assist local communities with the required planning. It also created a state-level implementing agency, the Department of Land Conservation and Development, composed of the Land

Conservation and Development Commission (LCDC) and a professional staff. Among other duties, these bodies developed and currently administer nineteen land-use goals and guidelines, with which (under Senate Bill 100) local governments' comprehensive plans and zoning decisions must be consistent.

Two of these statewide land-use goals are the most important for this case study. Goal Number 14 (Urbanization) requires every Oregon city to establish an urban growth boundary (UGB) containing enough land within it to meet the city's identified growth needs for twenty years; new urban development is expected to occur inside the UGB. Outside the growth boundary, LCDC's Agricultural Lands Goal (Goal Number 3) requires counties to preserve all lands suitable for farming, including those with Class I to IV soils, by means of exclusive farm-use zoning (EFU). Goal 3 provides for this protection unless the local jurisdiction demonstrates that land with such soils is in fact not suitable for agriculture. LCDC reviews requests for such exceptions and reportedly approves them only when the parcels in question already have commercial, residential, or industrial uses on them or where they are "surrounded on three or four sides by development that would conflict with farm use."<sup>13</sup>

In part to "sweeten the pill" of EFU zoning, another 1973 statute, Oregon's Exclusive Farm Use Zoning and Special Assessments Bill, made land under EFU zoning eligible for property tax assessments based on farm-use value rather than market value. Where land is zoned EFU, the County Assessor is required to employ a farm-use basis for assessing, as long as the land meets minimal productivity criteria (see Or. Rev. Stat., Sec. 308.345-308.406). In addition, farms in EFU zones are supposed to be protected from local government or state regulations which would unreasonably restrict farming practices because they produce noise, dust, or odors found to be annoying to nonfarmer neighbors.

B. Marion' Policies to Reduce Sprawl and Protect Farmland

1. An Urban Growth Boundary

Marion County began working with the City of Salem on developing an urban growth boundary before that kind of growth-management tool was required by state law. Marion Salem, and the county to the west of Salem (Polk) cooperated



in growth-boundary-setting through the mechanism of the Willamette Valley Council of Governments (COG), which they established in 1957. An advisory committee of the COG proposed an UGB which coincided with the 1968 Salem Area Master Sewer Plan. The UGB was based on the assumptions that the city was the logical provider of basic urban services, and that planned extension of sewer service could control urban growth because sewer facilities were necessary for dense urban development. The UGB was designed to: (1) contain urban development in planned urban areas; (2) provide sewer, water, police and fire services efficiently and economically; and (3) define an area large enough to accomodate Salem's expected growth for at least twenty years.<sup>14</sup>

Between November, 1971 and January, 1972, the UGB was adopted as part of the Salem Area Comprehensive Plan by members of the COG, including the Marion County Planning Commission and the County Board of Commissioners. The following data described the UGB when it was adopted in 1972. The area within Salem's Urban Growth Boundary comprised 44,800 acres or 70 square miles. Within that area were 23,100 acres or 36.1 square miles of vacant land. The City of Salem comprised 16,640 acres or 26 square miles. About 26 percent of the land area of the city was vacant.<sup>15</sup>

The City of Salem and Marion and Polk counties agreed on a UGB for Salem, with Marion's formal acceptance occurring in a vote of the County Board of Commissioners in February 1974. These agreements committed Salem not to expand beyond the UGB, and the two counties to use their land-use and other powers to encourage urban-type development to occur within Salem's borders or at least inside the UGB.

## 2. Exclusive Farm-Use Zoning

### a. Definition of "Farm Use" and Minimum Lot Size

State law defines for local governments what constitutes permitted uses under EFU zoning. Senate Bill 100 defined farm use to be "employment of land...supporting accepted farming practices for the purpose of obtaining a profit in money through crops, livestock, poultry, dairying, furbearing animals, honeybees, or any other agricultural or horticultural use."<sup>16</sup> Nonfarm uses are limited to schools, churches, golf courses, public parks, and public utility facilities.

## 5. MARION COUNTY

Marion County initially (in 1973) had a 20-acre minimum lot size for its EFU zones. However, this minimum was abandoned in favor of reviewing each case on its own merits, reportedly because no one standard would fit the County and, also, because many landowners had an expectation that all divisions down to the minimum would be approved.<sup>17</sup>

### b. Partitioning

Under Oregon's land-use goal 3 (Agricultural Lands), a county may not approve dividing EFU-zoned land if the creation of new lots threatens to undermine the viability of "existing commercial agricultural enterprise" in the area.<sup>18</sup> For example, persons proposing to split off land from an existing farm may claim that the new parcel would be used to raise peaches. However, the County might conclude that the parcel would be too small for any commercial fruit farm, that the proposers probably would raise peaches only as a hobby, and that the precedent of giving them an uneconomic EFU split would invite more proposals to partition, so that over time the entire area could become so divided into unviable parcels that commercial farming would cease or at least be seriously in jeopardy.

Marion's current chief planner reported the following procedures which the County follows in assessing a proposal to partition EFU land:<sup>19</sup>

When new farm parcels are proposed, soil productivity, drainage, terrain, availability of water, crop types and yields, and marketing practices and the size of commercial agricultural operations in the area are evaluated. If this evaluation shows the proposal is consistent with similar commercial agricultural operations in the area, the division is appropriate. Farm parcels smaller than justified by this evaluation may be considered if it can be demonstrated that, (1) the overall land use pattern of the area will not be altered, (2) productivity will be increased over that possible on the undivided parcel and, (3) the farm use represents a viable commercial agricultural enterprise.

If a partitioning is approved and a new parcel created, the owners are not automatically eligible for a building permit to construct a new residence. Any new residence is supposed to be needed by the agricultural operations:<sup>20</sup>

To qualify, a significant area must be in current agricultural use, and the type of farm operation must justify someone living on the premises. When a second or third dwelling is proposed for farm help, the new household must be needed to perform work that cannot be accomplished by those already living on the property. If there is doubt about the long-term need for a second dwelling, use of mobile home residence may be required with a removal agreement that includes an annual review to confirm the continuing need for the dwelling.

c. Declaratory Statements

Where nonfarm residences are constructed on EFU land, such as on existing lots of record, the County "requires that a declaratory statement be recorded in the property title".<sup>21</sup> These statements warn the owner that he or she may have to live with the smells, dust, noise, and other possibly annoying by-products of commercial farming. They make the point also that farmers should not be expected to change their normal farming practices because of adjacent residential development and that nonfarm residents should not create management difficulties for their farmer neighbors. Moreover, new nonfarm dwellings may be subject to mandatory setback requirements (100 feet or more) so as to buffer them from the nearby farming operations.<sup>22</sup>

d. Conditions for Rezoning Out of EFU

Marion County's policy has been that land is not supposed to be rezoned out of exclusive farm-use districts unless (as discussed in Section II) it is found to be unsuitable for commercial agriculture.

3. Special Agricultural Zone

In addition to the EFU zone, Marion County established a "Special Agricultural Zone (SA)" in November 1979. This zone is intended to protect the agricultural uses of land with small or special types of commercial agriculture. It applies to parcels ranging from five to 40 acres and with predominantly Class I to IV soils. The SA zone allows also for the partitioning of accessible areas with soils in Class V to VIII for nonfarm uses, provided that they are compatible with nearby farming activities.<sup>23</sup>



### C. Why Did Marion County Officials Adopt the UGB and EFU Policies?

To answer this question, we interviewed two of the three members of the County Board of Commissioners who served in the years 1971-74. One Commissioner explained that the EFU zoning was designed to give "protection to the man who wants to farm", and that the growth boundary gave Salem a "needed...realistic planning base", as well as channeling to Salem urban-type growth which otherwise the County would have to bear the burden of servicing.<sup>24</sup> The second Commissioner was also attracted to the planning advantages in a growth boundary:<sup>25</sup>

It made sense to me because with an urban growth boundary, you can plan. You can say you're going to run a sewer line out there;...you know it's going to go so far....Without an urban growth boundary, how can you plan ahead?

The second main objective of a UGB is to save farmland. The policy of the State of Oregon is to stack people up inside the UGB and prevent them from subdividing and chopping up the farmland.

We sought to understand these policymakers' motives also by asking for their perceptions of the political costs in adopting the EFU and UGB policies. They found the farming community to be divided, with many or most farmers in favor of those policies. One Commissioner recalled, "The majority of farmers were for it. But part-time farmers, who were located in rural areas and had in their mind the idea that when they quit or retire, they wanted to make a fat profit out of selling out, those are the types that raised hell."<sup>26</sup> The other Commissioner remembered, "If the farmer thought he was going to farm, he wanted out of the boundary. If he wanted to sell his land, he wanted in."<sup>27</sup> Other policy makers of the period had similar recollections. According to a Planning Commission member, "There was a mixed reaction by farmers. People who made their living primarily off the farms initially did not like the application of regulations, but they came to support the Exclusive Farm-Use designation, because it would protect them from other incompatible uses."<sup>28</sup> A second Marion County Planning Commissioner and two planners, one for Salem and the other working for the County, also remembered the farmers' reaction to the EFU and UGB policies as mixed but that most most farmers favored them.<sup>29</sup> Owners of farmland

near to cities tended to want to preserve the right to develop, but most of them found that they would be located inside the UGB and, hence, would escape EFU zoning.

In summary, County policy makers found the chief interest group to be affected by the proposed EFU and UGB policies, the farming community, to be mainly supportive. This support resulted from, among other factors, extensive educational efforts mounted both by planning professionals and cooperative extension staff. Another important contributing factor reportedly was the practice of basing the 1972 county plan on inputs from local advisory committees. The County was divided into districts for planning purposes, an advisory committee was appointed for each district, and -- according to one participant in this process -- 13 of the 14 committees recommended zoning for managing growth.<sup>30</sup> Another participant recalled that "85 percent of the citizen committees agreed that they wanted a growth boundary".<sup>31</sup>

D. Would Marion Have Adopted These Policies without the State Mandates?

As already discussed, Marion County began developing the UGB and EFU policies before they became required by Oregon law. However, the final adoption of the growth boundary and the strict enforcement of EFU zoning occurred after the enactment of the state land-use mandates in 1973. The current Planning Director believes that the state's actions facilitated Marion's growth management efforts, but that the County's own independent achievements must be recognized:<sup>32</sup>

Local officials are elected to represent local interests. It is not fair to expect them to adopt farmland zoning until a majority of landowners support it. Marion County succeeded in convincing most landowners of the benefits of protective zoning....However, it would have taken longer if the state had not identified the issues of statewide concern that needed to be addressed and provided funding to support local planning efforts.

III. IMPLEMENTATION AND EFFECTIVENESS

How effective have the EFU and UGB policies been in containing sprawl and preserving agricultural land?

A. Rezonings

Interviews with three planning department staffers and three members of the County Board indicate that the Comprehensive Plan has been consistently the first and most important general determinant in judging whether to approve a rezoning request.<sup>33</sup> A comment from a former Planning Director summarizes this point: "Number one criterion is to check the Comprehensive Plan. We would try to discourage an application in conflict with the Plan. It is unusual to get a zone change in the rural area because of the strength of the plan."<sup>34</sup>

The 1972 Plan called for directing urban growth "away from agricultural areas composed of major units of Class I and II soils."<sup>35</sup> The 1979 Plan identifies the EFU Zone as that area which is predominately Class I-IV soils, and has not been committed to a nonagricultural use. This Plan calls for limiting residential uses in agricultural districts "to those dwellings necessary to conduct farming activities and those non-farm dwellings that are determined to be compatible with the surrounding farm area," with such determination being based on, among other findings, that the proposed residential uses would not "interfere significantly with accepted farming practices on adjacent lands devoted to farm use" and would be "situated upon land unsuitable for farm use considering the terrain, adverse soil or land conditions, drainage, vegetation, location and size of tract."<sup>36</sup>

These stringent requirements appear to have the effect of discouraging requests for rezonings in an EFU Zone. For example, in 1979 only six zone change requests were made involving EFU land. All of the petitions asked that EFU land be rezoned for either commercial or industrial designation; there were no request for EFU to residential. Of those six, three were approved, and three denied. The presence of a significant discouragement effect was suggested in interviews with four local realtors and/or developers. They agreed that it was extremely difficult to obtain a rezoning in an EFU district. A developer who is a member of the Salem Homebuilders Association commented: "If the land is zoned EFU, you can just forget about it {rezoning}. You are not going to subdivide. I can't think of anyone who has subdivided in an EFU Zone."<sup>37</sup>

Farm leaders who were interviewed also reported that rezonings out of EFU were rare; said one Farm Bureau officer: "Basically you can't rezone our of EFU. If that's the way it is, it's going to stay that way."<sup>38</sup>



Another Farm Bureau leader commented: "You'd have about a 20 percent chance of successfully rezoning agricultural land. First you'd have to find some very marginal farmland. Unless it was within the UGB or already subdivided, you'd have a pretty hard time."<sup>39</sup> And a third observed, "In this area of the county {his land abutted the UGB}, it's almost impossible to get around the {zoning} restrictions."<sup>40</sup>

## B. Partitionings

To create new homesites on EFU land, most people use the partitioning process rather than trying for a rezoning. Partitionings of existing lots which involve building new roads or other public easements are called "major partitionings." Those which do not create public easements are called "minor partitionings". Marion's zoning ordinance permits the splitting of existing parcels into up to three lots without the need for rezoning out of EFU. The approval process may stop at the staff level; but either the landowner or neighbors may appeal, with final authority vested in the County Board.

For the years 1977-79, we found records of 139 proposals for minor partitionings of EFU-zoned land; and for 1978-79, we identified 34 major partitioning proposals for EFU land (see Table 5-1). Slightly more than half of the minor partitionings were granted, while the county approved 41 percent of the majors (Table 5-1). In those years, EFU land was supposed to be divided only if the split would enhance agricultural operations or at least not hinder them on the land proposed for partitioning and/or on adjacent farmland. The records for each partitioning case normally contain a summary of the zoning authorities' reasons for deciding for or against the petition. We analyzed these summaries for the 1979 major partitioning proposals (we found them for 20 of the 23 petitions acted on that year). As Table 5-2 indicates, the County's reported reasons were largely consistent with the criteria mentioned earlier in this paragraph and discussed at greater length in Section IIB.2 (b) of this case study. Among the 11 approvals for 1979, seven were granted for clearly agricultural reasons (see parts 1A to 1C of Table 5-2); two were compatible with the UGB-EFU policies because the parcels in question were entirely or partially inside a city's growth boundary and, hence, were "expected" to be developed (see part 1D); and two were hardship cases in which the County appeared to have acted reasonably (part 1E). For all 9 of the denials of partitionings (for which the records were available), the reported decision justifications involved

## 5. MARION COUNTY

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Table 5-1

PARTITIONINGS OF EFU-ZONED LAND  
MARION COUNTY, 1977-79

1. Minor Partitionings	<u>Yearly Total</u>	<u>Approved</u>	<u>%</u>	<u>Denied</u>	<u>%</u>
1977	39	18	(46.2)	21	(53.8)
1978	54	32	(59.3)	22	(40.7)
1979	46	21	(45.7)	25	(54.3)
TOTAL	139	71	(51.1)	68	(48.9)

2. Major Partitionings	<u>Yearly Total</u>	<u>Approved</u>	<u>%</u>	<u>Denied</u>	<u>%</u>
1977		(incomplete data)			
1978	54	3	(27.3)	8	(72.7)
1979	23	11	(47.8)	12	(52.2)
TOTAL	34	14	(41.2)	20	(58.8)

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Source: Records of the Marion County Planning Department

Table 5-2

REPORTED REASONS FOR DECISIONS ON MAJOR PARTITIONINGS  
IN MARION COUNTY, 1979

1. <u>For Approved Partitioning Proposals</u>	<u>Number of Cases</u>
A. The two proposed parcels already have homes standing on them; no new dwellings would be built, or an existing home would be removed and replaced with a new one; and the occupants of both homes would work for the farming operation.....	4
B. The two proposed parcels are capable of being farmed separately as economic units.....	2
C. Lot line adjustment; severed parcel(s) will be sold off to neighbors; all land would remain in commercial farming and production would not be reduced.....	1
D. Much or all of the parcel is already inside some city's urban growth boundary.....	2
E. Hardship cases: by order of a divorce court, the parcel has already been split; a farmer's son began building a farm dwelling but he ran out of funds and needed title to land as collateral so as to obtain a bank loan to complete the house...	2
	Total . 11
2. <u>For Denied Proposals</u>	
A. Proposed division would hinder efficient farming of the parcel in question or, at least, would not enhance the farming operation.....	5
B. Proposed division would likely affect adversely farming of adjacent land.....	3
C. The proposed homesites are not needed for farming operations or are not related to them.....	1
	Total 9

Source: Marion County Planning Department records.



findings that the proposed splits would not aid agriculture on the land in question and/or risked adversely affecting farming operations on adjacent parcels (see part 2 of Table 5-2).

### C. Factors for Success

#### 1. Support of the Farming Community

Zoning policies designed to protect farming would lack legitimacy and perhaps prove unenforceable if the farming community did not support them. Interviews with four officers of Marion's Farm Bureau, the county's most important farm organization, suggest that farmers have been supportive. All four were positive in their assessments of those policies. Said one leader, when asked if the zoning regulations were producing the desired effects: "There's no question. Without zoning, the County would be a mess. A good share of the people in the area {near, but outside Salem's UGB} would not be farming. You couldn't farm because there would be so many houses."<sup>41</sup>

#### 2. Adequate Data Were Available for Regulatory Decisions

Policymakers reported (in interviews) that the data for making rezoning and partitioning decisions tended to be adequate. These data included soils information from the U.S. Soil Conservation Service, topographic and hazard maps, air photos, assessor's maps, and -- in a few cases -- on-site inspections. Their major data problems arose when SCS information was at odds with private soil surveys and, also, when they were asked to judge conflicting claims over whether a particular parcel was a viable farming unit.

#### 3. State Mandates

In interviews, two members of the County Board of Commissioners stated that they followed the state's planning goals in making rezoning and repartitioning decisions.<sup>43</sup> These state-mandated land use goals, LCDC Goals 3 and 14, in particular (see Section II), may have a positive influence on the enforcement of land use regulations. They may offer a political advantage for the local elected officials. When unpopular decisions are rendered, they can "pass the buck" to the state.

In addition to LCDC, the state legislature established in 1979 the Land Use Board of Appeals (LUBA). LUBA exists to interpret and adjudicate issues arising from the application of the statewide planning and land use goals. This agency is another device that the state has to insure that local jurisdictions are implementing state policies.

Several suits have been filed by a watchdog group, "1000 Friends of Oregon", alleging that Marion County was in violation of state land use goals. In one such suit in 1979, LUBA reversed a Marion County ordinance (NO. 1562) which designated zoning for 475,000 acres. In LUBA No. 79-005, the appeals body found that this action of Marion's Board of Commissioners (BOC) violated Goal 2 (Land Use Planning), Goal 3 (Agricultural Lands), and Goal 4 (Forest Lands). LUBA ruled against the County because: (1) the BOC had failed to adopt "findings to show consideration of and compliance with Statewide Planning Goals"; (2) BOC had failed to require that "agricultural land be preserved in lot sizes appropriate for the continuation of the existing commercial enterprise in the area"; (3) BOC had permitted "non-farm dwellings on land suitable for timber production and other forest uses"; and (4) it had failed to demonstrate why certain rural lands zoned for non-farm or timber uses should be exceptions to the statewide planning goals (nos. 3 and 4) of protecting agricultural and timber lands.<sup>44</sup> Marion was thus forced to revise its zoning ordinance to eliminate these deficiencies.

The Oregon court system has also provided an effective check on Marion decision making. In 1979, in Still vs. Marion County Board of Commissioners (42 Or. App. 115), the state Appellate Court reversed a BOC decision which would have created a 99-acre, 30-lot subdivision, 2.5 miles outside the UGB on Class III and IV soils. The Court found that this Board action violated state planning Goals 2 (securing exceptions) and 3 (preserving farmland). The BOC had found the parcel irrevocably committed to residential uses and, thus, a suitable exception to the state's land-use Goal No. 3 and an appropriate candidate for rezoning out of EFU. However, the appellate court ruled,<sup>45</sup>

A finding that agricultural land is "committed" to residential use must be based on something more than a continuation of a peninsular growth trend in the vicinity...{N}othing in the record establishes that the existence of nearby subdivisions would prevent use of the subject parcel for agricultural purposes.

Therefore, the program has been effective in Marion County for a wide variety of reasons. Local officials realize that it would give them an opportunity to control sprawl and more economically provide public services. Farmers knew that they could farm without interference from non-farm new construction and complaints from new residents. Developers had well-defined areas in which to build. In Oregon, agricultural preservation has the sanction of state law; and this provided protection against local backsliding in land use matters.



IV. COSTS OF MARION'S POLICIES TO PROTECT FARMLAND

A. Impact on Land Prices

Those interviewed on this issue agreed that prices have risen since Marion County and the City of Salem tightened their land-use policies, but considerable disagreement exists as to the extent to which these policies can be blamed for increases in land prices.<sup>46</sup>

Most developers felt that the regulations had reduced the supply of developable land. One developer believed that this decrease contributed to a rise in the per-acre cost of undeveloped land inside the UGB from about \$1,000 to \$3,000 in 1973 to at least \$5,000 in early 1980.<sup>47</sup>

However, an official of LCDC estimated: "The growth boundary is responsible for less than ten percent of the price increase. I place the figure at between six and nine percent."<sup>48</sup>

In order to gauge the effect the UGB has had on land prices the Mid-Willamette Valley Council of Governments commissioned three economics professors at Willamette University to undertake a study on this matter. Their report, entitled, The Salem Area Urban Growth Boundary: Evaluation of Economic Impacts and Policy Recommendations for the Future, was published in November 1977. Their conclusion, set forth in the introduction, states: "The primary result of this investigation, supported consistently by all statistical tests, is the estimate that the Salem Area Urban Growth Boundary as such has had no significant impact to date on land prices in the area"(emphasis given).<sup>49</sup>

We asked four realtors and developers also if the EFU zoning and the Urban Growth Boundary had caused the county to have less overall development than if those policies had not been in place. None of those interviewed on this question believed that such an effect had occurred. One benefit of Oregon's state-imposed EFU and UGB policies may be that developers are not diverted from one county to another because the latter's policies are more permissive. Oregon mandates largely similar growth management policies for all its counties. Moreover, Marion's neighboring county, Polk, along with the City of Salem and Marion, organized and financed the Mid-Willamette Valley Council of Governments. This body has worked since 1957 to establish common land-use goals and guidelines for the three jurisdictions.



B. Administrative Costs of Marion's Growth Management Program

The administrative costs of the program have been relatively high. The Marion Planning Director estimated the cost to Marion County for revising the comprehensive plan and developing ordinances in 1975 to 1979 to have been \$200,000. All work was done "in house". (It took four years of effort by two staff positions at approximately \$25,000 per year per position). He reported also that the costs to his department of planning for, and regulating, land-use changes outside the UGB reached about \$100,000 per year in 1980.<sup>50</sup>

C. Political Costs

The political costs were reported to have been negligible. While Marion's growth management policies have been subjected to much heated discussion, they apparently have not been a cause of electoral defeat or victory. One planning official felt that it was to a candidate's benefit to support land use planning, but it was not crucial in gaining elective office.<sup>51</sup> One of the County Commissioners observed: "We've had no recalls {in Marion County}; we've had no big blow-ups; no one campaigns solely on the issue of zoning or no zoning. ...I think that speaks for a reasonable approach to a common goal."<sup>52</sup> And none of the five persons from the Marion and Salem planning staffs whom we interviewed believed that their jobs or promotional opportunities had depended on whether or not they were perceived as supporting the regulations.<sup>53</sup>

NOTES

1. Bureau of the Census, U.S. Department of Commerce, United Census of Population, 1980 preliminary census, Oregon.
2. Mid-Willamette Valley Council of Governments, A Comprehensive Plan for Marion County, (Salem, Oregon, 1972), p. 7.
3. Ibid., p. 11
4. United States Department of Commerce, The preliminary census results of 1978, Marion County, Oregon.
5. Unpublished data, Regional Science Research Institute, Philadelphia, Pennsylvania, on Marion County, Oregon.
6. 1980 preliminary census, op. cit.
7. Bureau of the Census, U.S. Department of Commerce, United States Census of Population, 1970, Oregon.
8. Bureau of the Census, U.S. Department of Commerce, United States Census of Population, 1960, Oregon.
9. United States Department of Commerce, The Agricultural Census of 1959, Oregon State and County Data.
10. Mid-Willamette Valley Council of Governments, A Comprehensive Plan for the Salem, Oregon, Area. (Salem, Oregon, 1971), p. A-3.
11. A Comprehensive Plan for Marion County, op. cit., p. 62.
12. Interview, April 1980.
13. Russell Nebon, "Marion County, Oregon, Farmland Protection Program", in State of Illinois, Institute of Natural Resources, Governor's Conference on the Preservation of Agricultural Lands: Proceedings (1981), p. 128.
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20. Ibid., p. 130.
21. Ibid.
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24. Interview, January 1980.
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26. Interview, January 1980.
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28. Interview, January 1980.
29. Interviews, January and April 1980.
30. Interview with a former member of the Marion County Planning Commission, April 1980.
31. Interview with the former director of the Mid-Willamette Valley Council of Governments, January, 1980.
32. Nebon, "Farmland Protection Program," op. cit., p. 131.
33. Interviews, January and April 1980.
34. Interview, January 1980.
35. Comp. Plan for Marion County (1972), op. cit., p. 4.
36. Marion County Department of Community Development, Marion County Comprehensive Plan (Salem, 1979), p. 16
37. Interview, January 1980.
38. Interview, April 1980.



## 5. MARION COUNTY

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40. Interview, April 1980.
41. Interview, January 1980.
42. Interview, April 1980.
43. Interview, January 1980.
44. Before the Land Use Board of Appeals of the State of Oregon, "1000 Friends of Oregon...vs. Marion County Board of Commissioners," LUBA No. 79-005.
45. Still vs. Marion County Board of Commissioners, 42 Or. App. 115 (1979).
46. Interviewed on this question were two LCDC planners, an economics professor at Willamette University, four developers, and three officers of the Marion County Farm Bureau.
47. Interview, January 1980.
48. Interview, January 1980.
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51. Interview, April 1980.
52. Interviews, January 1980.
53. Interviews. January and April 1980.

## Case Study No. 6

### LARGE LOT AGRICULTURAL ZONING IN BLACK HAWK COUNTY, IOWA

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LARGE LOT AGRICULTURAL ZONING  
IN BLACK HAWK COUNTY, IOWA

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I. INTRODUCTION

Iowa's Black Hawk County has been using its zoning powers since 1973 to protect highly productive farmland from conversion to nonagricultural uses or from the effects of such conversion on nearby land. What does Black Hawk's experience indicate about the effectiveness of zoning in protecting rich farmland in these two respects?

More specifically, this study addresses the questions of

- (1) what protection results have the Black Hawk policies achieved?
- (2) what side effects (such as impact on land prices and diversion of development to neighboring counties) have emerged?
- (3) where the Black Hawk policies have been successful, what conditions have led to those achievements?
- (4) where difficulties have been encountered, how have or might they be avoided or their effects mitigated?

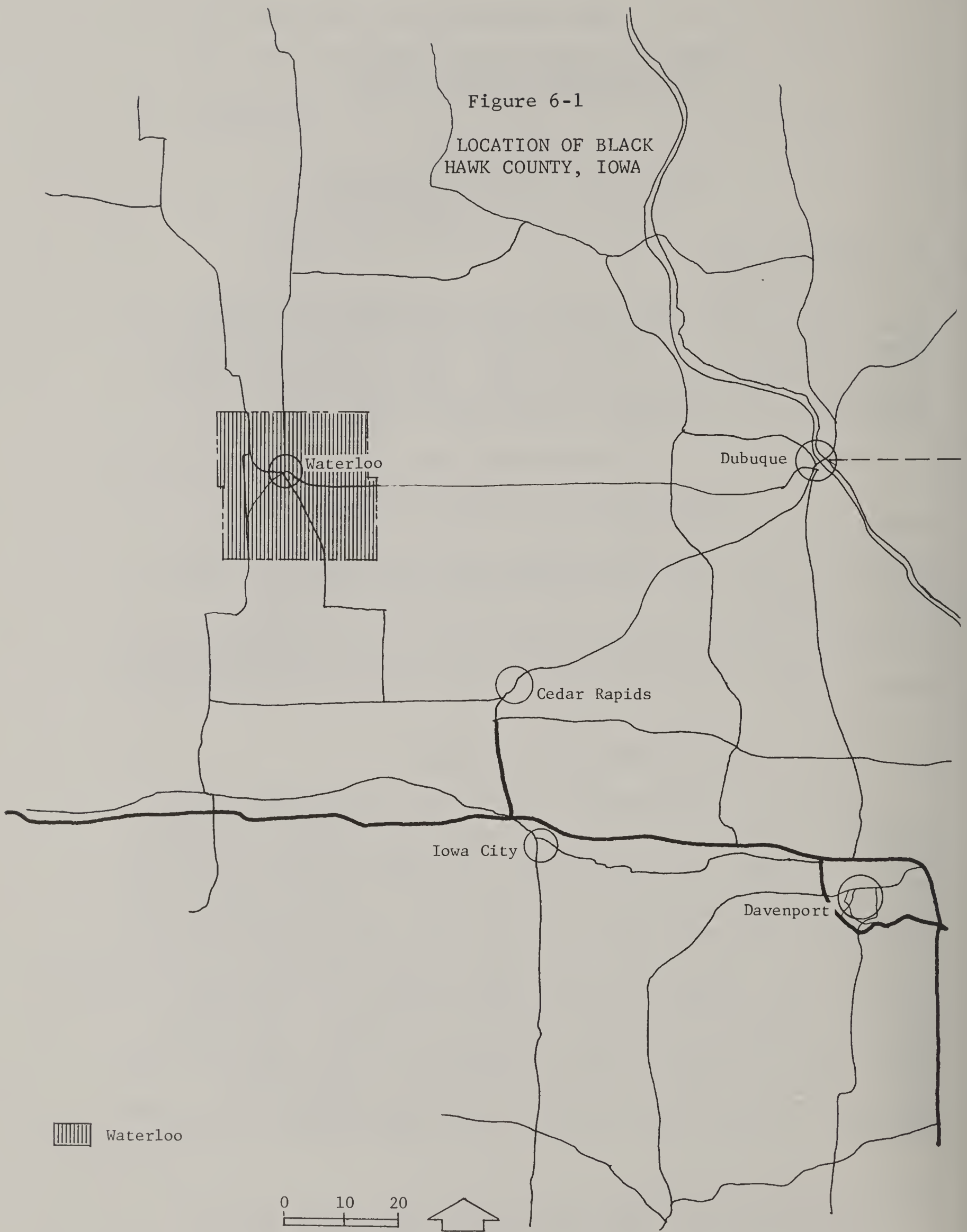
II. THE GEOGRAPHIC-DEMOGRAPHIC CONTEXT

Located in northeastern Iowa, Black Hawk County had a 1980 population of 137,511. The County is basically square-shaped, extending about 25 miles both north-south and east-west. An SMSA, Black Hawk has a metropolitan area consisting of two contiguous cities of Waterloo (the county seat, with 75,535 people) and Cedar Falls (36,134). These two municipalities and eight much smaller ones cover about 16 percent of the county's total land.<sup>1</sup> The remaining 84 percent, which comprised the unincorporated areas, contained in 1980 approximately 18,000 people living in rural subdivisions, in scattered nonfarm single-family homes, and on farmsteads. New-home buyers have been attracted to building sites in rural Black Hawk County because of the pleasantness of the landscape (i.e., gently rolling hills) and the proximity to employment opportunities in nearby Waterloo and Cedar Falls, among other factors. However, much of the rural home-building of the

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\* Assisting in the field research for this study were  
J. Scott McDonald, James D. Riggle, and Joseph Bolles.

Figure 6-1  
LOCATION OF BLACK  
HAWK COUNTY, IOWA



1960's and early 1970's took place on land which was excellent for farming. About 70 percent of the County's land has soils which fall in Classes I and II of the U.S. Soil Conservation Service's productivity classification system; another 17 percent is Class III land.<sup>2</sup>

According to the 1978 Census of Agriculture, Black Hawk County had 315,533 acres in farms and had as its major agricultural products corn, soybeans, hogs, and cattle. For the relatively large number of County farms with livestock operations (in 1978 over 600 raised cattle and 500, hogs and pigs), uncontrolled residential development in farming areas posed a potentially serious problem. The non-farm families living in most of the new homes tended to make intolerant neighbors of feedlots and other livestock operations, complaining about odors to the extent, at times, of compelling farmers to reduce, relocate, or close down their operations.

### III. THE POLICIES FOR PROTECTING FARMLAND AND FARMING OPERATIONS

Since the mid-1970s the government of Black Hawk County has been following four major policies to protect farmland. The number and nature of such policies were determined by examining the County's zoning ordinance and other relevant documents, and, also, through interviewing County officials: the current and two past chairmen of the County Board of Supervisors (the chief legislative body), the present and most recent-past chairmen of the Zoning Commission, the current Zoning Administrator, and the County's chief planner for land-use policies (1971 to the present). Other County officials were interviewed, but more in regard to the implementation of policies rather than as to what were the most important policies for farmland protection.

These different sources agreed on the following four policies:

#### A. Prohibiting Rezoning out of Farm Use Where the Land in Question is Highly Productive for Agriculture.

Like many farming counties which adopt zoning, Black Hawk classifies the vast majority of land (95 percent of the unincorporated area in 1979) as an agricultural district in which non-farm uses are excluded or permitted only under restrictive conditions. However, in many such counties the conditions for rezoning are liberal, so that the agricultural district's restrictions do little to protect farmland. In Black Hawk, before the adoption of a new zoning ordinance in



1973, rezonings were permitted where the proposed residential, commercial, or industrial development met customary public health and safety standards (e.g., adequate-size lot for a septic system, driveway positioned so as not to be a traffic hazard).

The 1973 ordinance added the condition that "prime" farmland would ordinarily not be rezoned out of agricultural use. "Prime" land was defined in terms of parcels' soil types and the latter's assigned Corn Suitability Ratings (CSR). For example, a ten-acre farm field proposed for rezoning might consist 60 percent of Bassett soil and 40 percent of Clyde. Its soil types are determined by plotting the parcel on the County's official soil map. Each soil type's CSR is found in the Soil Survey of Black Hawk County, a USDA publication, a preliminary report of which was available in 1973. The CSR assesses a soil type's average suitability for raising corn, Iowa's principal crop. The ratings range from a low of 5 (the poorest type) to 100, take into account the soil's physical and chemical properties, and assume an average level of farm management, among other conditions.<sup>3</sup>

Where plotting a parcel on the soil map indicates Clyde soil, for example, the Zoning Administrator enters in the technical report on the rezoning petition that the CSR is 76. That is the rating for Clyde soil which he finds in the County's soil survey. The listed rating is not derived, however, from harvest data on the particular parcel, but from data collected on benchmark Iowa plots. The rezoning petitioner can claim, therefore, that the listed CSR is invalid for his parcel, such as because erosion, drainage conditions, irregular parcel size, or other factors make for significantly lower productivity. However, for County zoning decisions, the burden of proving the invalidity of CSRs assignments rests on the petitioner.

From the time when the new zoning ordinance came into force, October 1973, until the end of 1975, a CSR of 76 would not have qualified a parcel as being "prime" farm. During those first two years the ordinance placed the cutoff for prime at a CSR of 85, which meant that about 40 percent of the land under County jurisdiction was considered "prime" for agriculture and, therefore, potentially ineligible for rezoning. In December 1975 the cutoff point was reduced to 70 CSR, thus extending the potential for protection to a total of approximately 63-64 percent of the County's unincorporated area. Then in June 1980 it was lowered once more, to a CSR of 60. About 72-74 percent of "County" land

had CSRs at this level and higher. A CSR of at least 60 does not automatically preclude rezoning out of agricultural use. As just discussed, the petitioner may convince the County's zoning authorities that, despite the high listed CSRs, his/her parcel is not truly prime land for farming. Moreover, if the parcel in question has both prime and non-prime soils and almost all is non-prime, County authorities may permit a rezoning. (If the parcel is at least 1.5 acres in size, 75 percent of its surface consists of "buildable soils" -- these soils being defined below in Section III C, and the landowner does not intend to create more than three lots, single-family home development is permitted without rezoning.)

Rezoning petitions are first heard by a seven-man Zoning Commission, appointed by the County Board of Supervisors, whose own five members are elected at large. The Commission receives input from the customary sources (petitioner, his or her attorney, neighbors to the subject parcel) and also from a Technical Review Committee, consisting of specialists in soils, public health, public roads, and planning, who report on the suitability of the proposed rezoning from the points of view of their fields of expertise. They are all county government employees, except for the soils specialist, who has been the SCS District Conservationist. The Zoning Commission recommends approval or denial of the rezoning to the Board of Supervisors, which makes the final decisions, except in the cases of a court challenge or when the petitioner seeks a variance. The County's Board of Adjustment decides on variances, but it cannot grant rezonings. The Zoning Commission makes recommendations on the basis of a simple majority. However, when it opposes a petition for rezoning, it forces a four-fifths vote by the Board of Supervisors (four out of the five members) before the petition can be granted.

#### B. Restricting Residential Development of Farms

Restrictions on rezoning out of farm use could be frustrated by liberal definitions of what constitutes a "farm" and the residential building rights associated with it. In some counties parcels as small as five to ten acres qualify as "farms" and entitle the owners to building permits for one single-family home per parcel as a matter of right. Rezoning from agricultural to residential use is, therefore, not needed; and the market price for that amount of land is frequently not high enough to discourage non-farmers or "hobby" farmers from



buying. The parcels bought tend not to be farmed for commercial purposes, or they are leased back to commercial farmers, minus an acre or so for a new single-family dwelling.

To protect against the loss of good farmland to hobby farming and fake farmsteads, Black Hawk County defines a farm for the purposes of new residential building as having a minimum of 35 acres. With that amount of acreage and if there is no residence already standing on the parcel, the owner is entitled to one building permit for himself; and he can build a second new house if it is to be used by a member of the immediate family or hired hand. A third house per 35 acres is not permitted, except where an existing farmhouse predates the 1973 zoning ordinance. In such cases the owner may choose to sell the farmstead, if it has at least 1.5 acres of land. Then he is free to build himself a new home and one other for a member of his family or hired hand providing the remaining land comprised at least 35 acres. If the 35-acre or larger parcel already has both a pre-October 1973 farmhouse and a second home, only one additional house can be built.

C. Restricting Non-Farm Residential Development in the "A-1" Zoning District to "Buildable Soils."

As of 1980 over 95 percent of the unincorporated part of Black Hawk County was zoned "A-1" Agricultural District. The County's zoning ordinance permitted non-farm residential development in that zone only if the parcel was at least 1.5 acres in size (three acres from 1973 to June 1980) and at least 75 percent of the site contained one or more "buildable soils" from a list of seven soils. None of the "buildable" soils was also a "prime soil". Instead, they were types which had "few limitations for septic systems, foundations, and other residential characteristics."<sup>4</sup> In other words, the County used soil characteristics both to protect prime farmland and to channel development to land most suitable for development.

These two uses were complementary. As the County tightened its criterion for "prime" farmland by lowering the threshold of "prime" from a CSR of 85 to 70 and then to 60, it also struck from the list soil types which previously had been buildable. From October 1973 to the end of 1975, a total of 26 were listed in the zoning



ordinance as permissible for development. Then in 1976 when the standard for prime land was dropped to a CSR of 70, the number of "buildable" soils was cut to 15. Some of the deleted ones had CSRs in the 70 to 85 range, and others had proved in the 1973-75 period to be troublesome for septic systems and other aspects of residential development.<sup>5</sup> When in June 1980, the zoning ordinance was amended to reduce the prime standard to 60, "buildable" soils were again cut, to seven. Those seven accounted for approximately 14,000 acres or about 5 percent of the County's total unincorporated area.

In 1980 the ordinance was amended also to reduce the minimum lot size for a single-family home in the "A-1" zone from three to 1.5 acres. County policy makers in office in 1973 reported in interviews that they chose the three-acre minimum both for public health reasons and for the purpose of discouraging residential growth. That size minimum promised to be more than adequate to accomodate septic systems and wells without problems and, also, to make such homesites affordable only to the upper levels of the real estate market.<sup>6</sup>

The 1980 Amendment occurred largely in response to complaints from builders and home-buyers, as well as from farmers, that the three-acre minimum was wasteful of land.<sup>7</sup> Many if not most buyers did not want so much land, and farmers were distressed to see three-acre parcels taken out of agricultural use for just a single home each. However, cutting the minimum lot size in half risked greatly increasing, perhaps by 100 percent, the number of new homes which could be placed on land with buildable soils. To avoid this risk, the County reduced the number of buildable soils by more than half (as discussed above, from 15 to seven).

#### D. Protecting Large Livestock and Poultry Operations from Conflicts with Residential Development

As discussed in this report's Section II, Black Hawk has had a relatively large number of farms producing livestock commercially. To protect the bigger ones against nuisance complaints and any resulting need to reduce, relocate, or terminate operations, the County adopted in 1975 an amendment to the zoning ordinance which prohibits rezoning of land to a residential district where it is within a quarter mile of a feedlot with more than 500 head of livestock or poultry farm of more than 5,000 fowl. These restrictions were

designed to be binding, regardless of whether the land proposed for rezoning has low CSRs or otherwise is well-suited for residential development. In 1980 the restrictions were redefined to affect land within the same distance of any "existing feed lot, confinement facility, or poultry farm " big enough to require a discharge permit from Iowa's Department of Environmental quality.

#### IV. EFFECTIVENESS OF LAND-USE RESTRICTIONS FOR PROTECTING FARMLAND

##### A. Restrictions on Rezoning "Prime" Land

From 1976 through 1979 Black Hawk County's zoning authorities ruled on 95 substantive petitions to rezone land out of the farm-use district ("A- Agricultural District").<sup>5</sup> For 89 of those 95 cases, the Zoning Commission's records had the relevant parcels' Corn Suitability Ratings (CSRs). During the 1976-79 period, "prime" land was defined as that whose soils had CSRs of 70 or higher. Thirty-nine of the 89 petitions involved prime farmland by this definition (where a parcel had two or more soil types, we classified it as "prime" if half or more of the types had CSRs of 70 or greater). Of those 39 cases, 24 or 62 percent were denied for rezoning, while 15 (38 percent) were approved (see Table 6-1). However, of the 15 that succeeded, eight were cases in which the Zoning Commission's meeting minutes on them indicated that, despite high CSRs shown on the soil map, the land was not suitable for economic farming. Four parcels were covered with trees; in another two cases gravel mining in the past had stripped away all or most of the topsoil; one small parcel was "surrounded by residential property" and, thus, was considered no longer economic to farm; and the eighth case involved a four-acre tract where farming was reportedly precluded by "a large drainage ditch, large trees, and rocks."

In sum, 32 of the 39 zoning decisions (or 82 percent) appear to have been in conformance with the county's policy of protecting highly productive farmland. Only seven seem to have been at odds with it. Moreover, as Table 6-1 indicates, the county's zoning authorities became stricter as the years passed. While in 1976 they approved 10 of 18 petitions where parcels' soils had high CSRs, in 1977 only two of six were passed; in 1978; three out of seven; and in 1979, none of eight.

The above discussion might be misleading in the sense of suggesting a criterion for decision-making which the actual policy makers did not use. How can we have confidence



that Black Hawk County's zoning officials tended to use the Corn Suitability Rating of a parcel and/or other indicators of farmability as significant criteria for their decisions? Without such confidence, we may not be evaluating farmland protection policies, but some other policy or policies which coincidentally and perhaps only temporarily result in high CSR parcels being denied for rezoning more frequently than low. We found three kinds of evidence that zoning officials were in fact using farmability as a major criterion:

(1) In the fall of 1979, we interviewed six of seven current Zoning Commission members and a recently retired chairman of that commission. Also interviewed were three of the five current Board of Supervisors members and one recent retiree. Three of the Zoning Commission group said that the CSR rating was the single most important criterion they used in deciding on rezoning A-1 land. And five of them (out of a total of six) reported that the CSR definition of prime land was a binding constraint or close to being one, that is, they would rarely if ever rezone land with a high CSR: "It's a virtual demarcation line; above 70 CSR it's very, very difficult to grant a rezoning"; "first you've got to have the right CSR"; and "we sit pretty tight in Black Hawk County on the CSR thing." One of the four-person Board of Supervisors group said the CSR was his most important criterion, and two stated that it approached being a binding constraint (e.g., "Anything with a CSR 70 or above is a 'no-no' for any purposes other than agriculture").

(2) Entries in the Zoning Commission's minutes for individual rezoning cases also indicate that CSR levels and related information about productivity were used as decision criteria. In the 24 cases of rezoning petitions during 1976-79 which involved "prime" land and were denied (see Table 6-1), the Zoning Commission's minutes for 13 of the 24 show that Commission members were aware of the high productivity ratings and were influenced by them (e.g., "{D}ue to the fact that this was extremely prime farmland, it was moved...to recommend denial"; and "{Commissioner} Riensche said that this area has a CSR of 72 and therefore should be farmed"). In eight of the 15 cases where rezonings were approved despite high CSRs, the minutes also show concern with productivity, but findings that, regardless of the CSRs indicated on the soil map, the land was not well suited for farming (see the discussion above at the beginning of Section IV of this study). Other decision criteria emerge from the Commission's minutes as important, such as concern



Table 6-1  
 PETITIONS SEEKING REZONING FROM "A-1" (AGRICULTURAL)  
 TO NON-AGRICULTURAL USES: 1976-79\*

Cases with	1976		1977		1978		1979		1976-79**	
	Approved	Denied	Ap.	D.	Ap.	D.	Ap.	D.	Approved	Denied
High Corn Suitability Ratings=70 or above	10	8	2	4	3	4	0	8	15 (38%)	24 (62%)
Low Ratings = below 70	8	3	10	5	6	5	5	8	29 (58%)	21 (42%)
Total	18	11	12	9	9	9	5	16	44	45

Source: Files of the Black Hawk County (Iowa) Zoning Commission.

Note: \*In these four years there were 95 such petitions which were of a substantive nature. Excluded from this table's analysis are two petitions in 1976 which were for technical changes of zone, that is, the properties in question had been subdivided in the past and rezonings were needed to reflect those divisions. Of the 95 substantive petitions, the Zoning Commission's records for 89 had the Corn Suitability Ratings for the relevant parcels.

\*\*The chi-square value for this part of the table, the summaries for 1976-79, is 6.3618, which for a one-tailed test, is significant at the .01 level.

over drainage and water pollution problems, over the suitability of building sites for septic systems, and over the potential for conflict between non-farm residents and livestock farmers if new homes are placed too close to intensive livestock operations. However, the single most important criterion found in the 1976-79 minutes, as well as in our 1979 interviews, was agricultural productivity, as defined in most cases by the CSRs.

(3) If contrary to the minutes and interviews, Black Hawk County zoning officials were not using agricultural productivity as a major, if not the chief, criterion, they were fooling some of their normally very keen critics. We interviewed three realtors or realtor/developers and two bank officers knowledgeable about the rural land market. All five agreed that rezoning was likely only, or much more likely, where the land was not prime for agriculture. For example, one of the bankers reported, "You have to get a CSR under 70." A realtor said, "The CSR and soil types have become a law.... The largest things that they look at in regards to a rezoning request is the CSR and the soil type"; and "If the property were all in cropland {as opposed to being wooded} and had a high CSR, I wouldn't bother trying for a rezoning."

Is the County's reputation for denying most rezoning petitions involving prime farmland discouraging would-be developers from submitting such petitions? The Chairman of the 1979 Zoning Commission believed that a discouragement-effect had already emerged.<sup>8</sup> Interviews with the above-cited realtors/developers suggest that they would not seek a rezoning of a parcel with a high CSR unless the rating could be discredited, such as with the presence of timber cover or some other credible obstacle to commercial farming.

#### B. Effectiveness: Regulating Farm-Related Residential Development

To assess the strictness and consistency with which the County has implemented its regulations regarding home-building on "farms," we interviewed three realtor/developers, two bank officers knowledgeable about rural real estate, and the president of the County's most important farmer organization, the Farm Bureau. All agreed that 35 acres was the minimum acreage to be eligible for building permits (without the need to obtain rezoning or to prove that one has "buildable soils" on 75 percent or more of and at-least-three-acre parcel). We asked the three realtors and two bankers if they knew of ways of circumventing this minimum.

Four of them expressed the belief that there was no effective way to get around it. But one suggested a strategy of buying more than 35 acres, let us say, 45, building the new home to which one is entitled ( and a second, if it is to be used by someone helping with the farm), and then selling off all the acres minus the new homestead, so that the new owner is left with at least 35 acres and qualifies for a building permit. If the initial parcel is large enough, this process of buying, building, separating out the new homesite, and then reselling could go through several cycles. However, apparently few developers have bothered with this complex route, probably because easier ways were available, such as developing on "buildable soils."

C. Effectiveness: Restricting Development on Non-Prime Soils

We asked the same "expert informants" -- the three realtor/developers and two bank officers -- to assess the strictness and consistency with which the County has implemented its policy of limiting development on "non-prime" land (i.e., below a CSR of 70) largely to buildable soils, on parcels of at least three acres. All five agreed that the three-acre minimum was enforced and that the soils were supposed to be suitable for septic systems and otherwise buildable. The County arranged with the electric power company serving Black Hawk not to provide a new home with electricity unless the owner has a valid building permit, and permits had not been issued except on three-acre plots.

D. Effectiveness: Prohibiting the Location of a Residential Zoning District within a Quarter Mile of Large Livestock and Poultry Operations

Our knowledgeable informants for assessing the implementation of this policy were farmer leaders: the President and Vice-President of the Black Hawk County Farm Bureau. Both agreed that the policy was being enforced; the Farm Bureau President reported, "As far as I know, the County is adamant about this rule."

E. Effectiveness: Conditions which Significantly Undermine County Policies for Protecting Farmland

When we asked the County officials responsible for implementing the above four farmland-protection policies to identify and assess conditions which undermined those policies,



they mentioned two: the State of Iowa's plan to route an interstate highway, I-380, from the County's southeast corner to Waterloo; and annexations of farmland by municipalities, which take the land out of reach of County protection policies. Interstates have consumed on average about 40 acres per mile.<sup>9</sup> The one planned for Black Hawk would extend about 15 miles into the county, eating up as many as 600 acres, which would be more than three times the amount of land directly protected by rezoning denials, 1976-79. (In those years the County turned down 24 rezoning petitions for "prime" land, which, if approved, would have permitted development of a total of 155 acres.<sup>10</sup>) Two Supervisors complained in particular about the alignment of I-380's right-of-way. More than half of it cuts diagonally across the County, dividing farm fields into triangles and other odd-shaped, difficult-to-cultivate pieces, rather than following section lines and, thus, producing fewer disruptive effects.

As of 1975 Black Hawk County's nine municipalities had over 36,000 acres of agricultural and otherwise undeveloped land, about 10 percent of the County's entire land area. Cedar Falls had over 6,000 undeveloped acres and Waterloo had 22,400 acres. In both cities' cases most of this land was being farmed. However, according to interviews with members of their planning departments, neither city currently had nor expected in the near future to have farmland protection policies. Most of the annexation activity occurred in the 1960s and resulted in large part from competition between Cedar Falls and Waterloo for control of land where major developments were expected to occur. A big spur to pre-emptive annexations was the anticipated building of a large John Deere plant. Both cities wanted to control likely sites before Deere made its decision. Similarly-motivated annexations occurred in the 1970s, although on a smaller scale. However, even a modest annexation, let us say 200 acres, is likely to cause more farmland to be placed in jeopardy of development than protected from development by a year or two of County rezoning decisions. Cities must be entitled to grow, but pre-emptive annexations can lead to sprawl-type development into hitherto rich farming areas, while vacant land not farmed or less-intensively cultivated closer to a city's center is by-passed. The Chairman of Black Hawk's Zoning Commission was seeking in 1980 a mechanism to give counties a say when prime farmland is threatened with annexation; it was a mechanism which, he believed, would probably come about only through a state mandate.

V. COSTS VERSUS BENEFITS OF LAND-USE RESTRICTIONS DESIGNED TO PROTECT FARMLAND

The discussion in Section IV of this study indicates that persons seeking to develop land in unincorporated parts of Black Hawk County in the four years 1976-79 were unlikely to secure the necessary zoning and/or building permits if (a) the land was within one-quarter mile of a large livestock or poultry farm or (b) if the parcel proposed for development was not, itself, at least 35 acres or, if smaller, did not consist of "buildable soils." If, instead, its soils had high CSRs and there was not evidence that, despite the high ratings, the land was poor for farming, the prospective developer had only about an 18 percent chance of obtaining the required rezoning.<sup>11</sup> For the three years 1977-79, that probability dropped to 10 percent.<sup>12</sup> This rather strict set of zoning obstacles to converting prime land blocked directly 24 development projects, involving a total of 155 acres in the period 1976-79.<sup>13</sup> The Chairman of Black Hawk County's 1979 Zoning Commission believed that a number of other projects were directly frustrated in that their promoters, appreciating the County's protection policies, decided against submitting petitions for rezonings (see the discussion at the end of Section IV A{3}).

Were these achievements of zoning policy worth their costs? We break the costs of such policies into the categories of administrative and other financial costs incurred by government, the possible economic cost of inflating land prices because the restrictions limit the supply of buildable land, and the political costs borne by County officials identified with the restrictions. Two other questions to be addressed in this section on costs are (1) whether the policies have stood up in court and (2) whether the development restricted from good farmland in Black Hawk has not been diverted to equally productive land in neighboring counties which lack farmland protection policies.

A. Financial Costs to the County

Black Hawk's zoning approach to protecting farmland has not been fiscally expensive, at least not to the County government. We break program expenditures down into the costs of starting up the program, of implementing its policies on a day-to-day basis and of periodic review and revision of the policies.

1. According to interviews with planning and zoning officials who were on the job during the years 1972-73, when the new zoning ordinance was being developed, the



start-up costs to the County consisted mostly of the salary of one professional planner for six to seven months. That planner estimated that he devoted about 50 to 60 percent of his time for one year on the ordinance's development. The County's part-time Zoning Administrator spent about half of his half-time position also on the ordinance. Members of the Zoning Commission devoted considerable time to it, but they received no pay for their services besides mileage reimbursement for travel to and from meetings.

A costly component for starting up the farmland protection program, but one which the County did not have to pay for, was the preparation of the soil survey. The U.S. Department of Agriculture financed it.

2. Day-to-day implementation costs have amounted to the salary and fringe benefits of the Zoning Administrator (who became full time in 1975), part-time staff support from a Council of Government (the Iowa Northern Regional Council of Governments) with which the County contracts for land-use planning work, and the overhead expenses in running the Zoning Administrator's office (e.g., travel, office supplies, etc.). For Fiscal 1980 the Zoning Administration's total costs were calculated at \$42,500. Added to those costs, however, should be the value of the time spent by County officers in serving on the Zoning Commission's Technical Review Committee (discussed above in Section III A). Two of the Committee's members' time is already accounted for -- that of the Zoning Administrator and the planner supplied under the contract with the Council of Governments. Two other members' times are not -- those of the County Engineer and a representative of the County Health Department. If we assume that they devoted on average 1.5 hours each to reviewing a zoning case, and that the Committee has about 24 cases per year involving rezoning petitions from A-1 land, we have another 72 hours of professional time per year whose costs should be attributed to the farmland protection policies.<sup>14</sup>

3. There were no significant extra costs involved in reviewing and revising the protection policies, as these functions are carried out as parts of the normal work loads of the Zoning Administrator and the Zoning Commission. The additional costs our interviews identified were very minor--those of reimbursing Planning Commission members (who served without pay) for their travel to and from several special meetings held in 1979 for revising the zoning ordinance and for developing a new general plan which would articulate the County's farmland preservation objectives, among other goals.



B. Impact of Restrictions on Land Prices

Our "jury" of three realtor/developers and two bankers was divided on the land-prices impact of the County's zoning restrictions. The bankers and one developer believed that little if any of the per-acre price increases observed for rural building lots should be attributed to the zoning restrictions. Most of the demand has been for three-acre parcels, it was strong to moderate throughout the 1970s, but County zoning policies--these three respondents believed--did not restrict supply enough to affect prices significantly. There were sufficient lots of record and three-acre sites with low CSRs.

One developer, however, argued that the zoning restrictions did drive up land prices significantly and that the culprit was insufficient supply of rural building sites. He attributed a third or more of the price increases of recent years to the zoning policies. The other "jury" member was inconsistent in his responses, first reporting that there was no impact and then talking about some indirect price increases.

C. Political Costs.

We asked the six present and past Board of Supervisors' members we interviewed, the seven Zoning Commission members, and three zoning administration staff persons to assess the political costs of the County's zoning policies to protect farmland. To the six Supervisors, we asked if one or more of those policies had ever been an issue in elections to the Board. The two who served in the early 1970s said, "no". Two others responded that the policies have been discussed during election campaigns but were never major issues. Another reported advocating farmland preservation in his campaign. The sixth Supervisor interviewed stated that it "hadn't been an issue lately" but that it might become one. He wanted the minimum lot size reduced from three to 1.5 acres and was considering making an election issue out of the "need" to change.

To all the officials interviewed, we asked questions to assess the "political costs" to them in terms of criticisms of their actions from farmers, realtor/developers, and other groups influential enough to jeopardize their tenures in office. Four of the six Supervisors reported that in their contacts with farmers, most of the latter favored the protection policies, while a fifth Supervisor found farmers rather evenly divided in their attitudes.

The Zoning Commission members and administrators also found farmers divided, but with those against not sufficiently strong in numbers or focused in their opposition to force a weakening in the policies.

In contrast, almost all realtors and developers were perceived by officials to be opposed to the zoning restrictions. However, two of the Supervisors and three Commissioners reported the belief that some or many realtors were learning to live with the ordinance, such as by purchasing their own copy of the County's Soil Survey and advising clients not to buy where the CSR was too high. Moreover, no Zoning Commissioner or administrative staff member has been dismissed or otherwise severely penalized for supporting strict implementation of the protection policies. Two staff members reported receiving strong personal criticism from realtors, but not enough to jeopardize their positions. In sum, adopting and implementing Black Hawk's farmland protection policies do not appear to have generated high political costs.

#### D. Court Challenges

Zoning officials and the County Attorney reported that none of the restrictive policies had been challenged in a court suit. When we asked why, three officials and one realtor shared the opinion that there was sufficient land where development could occur, both in the city and county, to deter interested parties from bothering with suits. One knowledgeable official suggested two other important deterrents: many people felt that the courts would not support them; and many found the County's farmland preservation policies too popular to challenge, because in so doing they would risk antagonizing influential economic and political interests, including farmers and agriculturally related industries such as John Deere.

#### E. Diversion of Developments?

Has development prevented from occurring on prime land in Black Hawk been diverted to equally good farmland in neighboring jurisdictions which lack farmland protection policies? If such diversion took place, there would be no net saving of prime land. Some development which may otherwise have been located in the County has occurred in Waterloo and Cedar Falls and in some cases on prime land, but much or most of that development had the advantage of being closer to schools and other public services and, hence, less expensive to serve. The six Iowa counties adjoining Black

Hawk may have also received some diverted development, but as of early 1980 four of the six had adopted zoning ordinances patterned after Black Hawk's and, therefore, faced developers with basically the same restrictions.<sup>15</sup> This harmonization of zoning policies, so critical to successful preservation of good farmland, was largely the result of efforts of the Iowa Northern Regional Council of Government, the agency --located in Waterloo -- which provided most of the staff support for the adoption and implementation of Black Hawk's policies.

## VI. CONDITIONS FOR ADOPTING FARMLAND PROTECTION POLICIES

### A. Obtaining Agenda Status

Discussion of a new zoning ordinance to protect prime farmland became an agenda item in Black Hawk in the early 1970s through the dissatisfaction of Board of Supervisor and Zoning Commission members with the then current ordinance adopted in 1960. We interviewed two of the Supervisors in office when the 1973 ordinance was adopted and the Chairman and one other member of the Zoning Commission in that year. Their reasons for wanting a new ordinance, more restrictive of development on farmland are quoted at some length rather than summarized, in the expectation that their actual words will be more persuasive to other local government officials than this author's choice of words for summaries:

--"We didn't want development to occur for two or three reasons. Iowa is basically an agricultural state. Rural and urban do not coexist in harmony. Therefore, we wanted the producers of food and fiber to function as effectively as they can. We don't want to use our best farmland for urban purposes. You can't reverse the process; it's very expensive to recover land for farming.

"We wanted to keep the integrity of the farming community. You don't isolate him -- the farmer--by surrounding him with residential development. He can't function.

"Although it is a legitimate desire for people to move out to the country to get a place for themselves, there's an interim after which you have an urban area in a rural section. Those people have defeated themselves. We haven't helped anyone; it's only a temporary accommodation for country living."



--"We needed to restrict building in the country and preserve our prime farmland. If we put houses here and there, it's going to restrict farmers, such as with their confinement operations."

--"People were moving out despite a lot of vacant lots in Cedar Falls and Waterloo. And I could see that good productive farmland was being used up more rapidly than I wanted to see."

"They built along hard-top roads and their driveways and culverts were traffic hazards."

--"Say this guy bought some land for housing here, and I have a hog set-up here, and the wind would blow the stuff to them; and they'd howl like heck."

These four sets of quotations come from four separate 1973 officials, three of whom were or still are farmers. One was a past Farm Bureau President. They were concerned mostly with protecting good land and/or existing livestock operations. As mentioned in this report's Section II, livestock production is a major component of commercial farming in the County. Another set of concerns was over public safety and health (traffic hazards and excessive concentrations of septic fields).

#### B. Obtaining Adoption of the Soils-Productivity Approach to Restrictive Zoning

Our interviews with these four officials and with the chief planning staff person in that period suggest five reasons for adopting the CSR approach:

(1) Officials were looking for a tool which appeared objective (or at least gave the impression of being usable in an objective way), and the use of soils data with a cut-off level for "prime" land seemed to meet that need.

(2) They knew that another county, Walworth in Wisconsin, was adopting that approach, such knowledge making it less exotic and more acceptable.

(3) CSR data were already being used in Black Hawk for tax assessment purposes, and this current use made them more acceptable for zoning.

(4) A trustworthy soil survey (done by USDA) was already ready for use: and a trusted, articulate person, the District Conservationist (SCS), was available to explain to policy makers, farmers, and others how the CSR system of soils evaluation worked and how it could be adopted for zoning.

(5) The prime movers of this approach to zoning, two officers of the planning agency, chose to move with care. To minimize misunderstanding and maximize cooperation between the Board of Supervisors and the Zoning Commission, these planners arranged joint meetings of the two bodies where both general and detailed issues were raised. Realtors' reactions to draft articles were solicited, and some compromises struck. Over two years were spent in drafting the ordinance and seeking its acceptance.

## VII. CONDITIONS FOR SUCCESSFUL IMPLEMENTATION OF FARMLAND PRESERVATION POLICIES

A. Flexibility in implementation so that misleading CSRs do not lead to inequities and the undermining of the ordinance's political legitimacy. As discussed in the report's Section IV A, the soil productivity ratings may obscure severe obstacles to economic farming of a parcel. The CSR has been used in Black Hawk as a guide, not as an insurmountable barrier to rezoning when the ratings are high.

B. A Full-Time Zoning Administrator. After two years of difficulties with part-time administrators, the Zoning Commission moved in 1975 to hiring someone full-time. Both the Administrator hired then and her replacement in early 1979 had degrees in geography and had the necessary technical background. Another needed trait which both had was a willingness to "stand up for the ordinance," that is, to defend its provisions before realtors and other objectors, both in the Zoning Administration office and at public meetings.

C. A Technical Review Committee of soils, public health, and transportation experts to provide the lay policy makers on zoning (the Commission and the Board of Supervisors) with technical data in understandable forms.

D. A strategy of tightening restrictions gradually, as public acceptance increases or opposition weakens. As discussed in Section III A above, for the first two years of the new ordinance's life, the County defined as "prime" farmland only about 40 percent of the land in its jurisdiction. But in 1975, the cut-off between "prime" and "non-prime" was lowered from a CSR of 85 to one of 70, thus increasing the total area where rezoning was restricted to about 63-64 percent. The further change in 1980 (lowering the cut-off from 70 to 60) made eligible for this protection in all about 72-74 percent of Black Hawk's unincorporated land.

E. Forestalling legal challenges and political opposition from the development industry (realtors, developers, builders) by allocating a significant quantity of land to satisfy much of the market for "country-living" homesites. Black Hawk gave realtors and others in the development industry the chance to make money from rural homesites, but the County limited those sites largely to land with less than-prime-soils for farming.



NOTES

1. INRCOG {Iowa Northern Regional Council of Governments}, Land Use Element, Region Seven, 1977, Part One.
2. Janice M. Clark, "Agricultural Zoning in Black Hawk County" (Black Hawk County Zoning Commission, n.d.), p. 3.
3. Larry C. Larsen, Zoning Administrator, Black Hawk County, Iowa, and Sonia A. Johannsen, Chairman, Black Hawk County Board of Supervisors, "How Black Hawk County, Iowa, Identifies and Preserves Prime Agricultural Land by Using Corn Suitability Ratings" (Black Hawk County Zoning Commission, Waterloo, Iowa, June 1979).
4. Ibid.
5. Interview with INRCOG staff, Waterloo, Iowa, October 1979.
6. Interviews with one Supervisor and three members of the Zoning Commission who served at the time of the ordinance's adoption.
7. Interview with a member of the INRCOG staff, February 1981.
8. Interview, Waterloo, Iowa November 1979.
9. Brent H. Spaulding and Earl O. Heady, "Future use of agricultural land for nonagricultural purposes," Journal of Soil and Water Conservation, 32 (2, 1977): 89-91.
10. The acre figures for the 24 denied rezonings were found in the minutes of the Zoning Commission meetings on those 24 petitions.
11. In the 1976-79 period, there were 39 cases which involved requests to rezone A-1 land to nonagricultural uses and for which the Zoning Commission's records had the relevant parcels' Corn Suitability Ratings. Black Hawk's zoning authorities turned down 24 of these 39 petitions; and for another eight (i.e., eight of the 15 approved cases), evidence was introduced that, despite the high CSRs, the land in question was not economic to farm. Thus, only seven of the 39 cases, or 18 percent, appear to have concerned highly productive land that was approved for rezoning.

12. As Table 6-1 indicates, the three years 1977-79 had a total of 21 cases where the land in question had high CSRs. The zoning authorities denied 16 of these 21 petitions; and three of the approved cases reportedly concerned parcels which, though listed as having high CSRs, were in fact not profitable to farm. Therefore, only two of the 21, or about 10 percent, appear to have had good farmland which was approved for rezoning.
13. See note 10 above.
14. Twenty-four was the average for the years 1976-79. Three hours per case was the average work time estimated by two members of the Technical Review Committee who were interviewed in the fall of 1979.
15. Bremer, Buchanan, Butler, and Grundy Counties.





Case Study No. 7

FIXED-AREA BASED AGRICULTURAL ZONING IN  
WEST HEMPFIELD TOWNSHIP, LANCASTER COUNTY, PENNSYLVANIA

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FIXED-AREA BASED AGRICULTURAL ZONING IN  
WEST HEMPFIELD TOWNSHIP, LANCASTER COUNTY, PENNSYLVANIA

by

Lisa Rosenberger

I. INTRODUCTION

West Hempfield Township, composed of slightly more than 11,000 acres (17.2 square miles), is situated in western Lancaster County, less than ten miles from downtown Lancaster (Figure 7-1). The township is sandwiched between two limited access highways (U.S. 30 and state highway 283), and is serviced by a Reading railroad freight line. The topography of the agricultural area is gently rolling, and picturesque farmsteads dot the landscape. Most of the residential development has occurred on a ridge which bisects the township and whose steep slopes and relatively poor soils make it generally unsuitable for farming. In 1970, the distribution of land uses in the township was estimated by the Lancaster County Planning Commission as shown in Table 7-1. While no comparable land use data have been compiled for more recent years, the Township Zoning Officer estimates that there are 6,577 acres of land in farms in 1980.<sup>1</sup> Thus, approximately 1,150 acres of farmland were lost during the decade, representing a 15 percent decline.

The population of West Hempfield Township in 1970 was 6,501 (or 378 persons per square mile). While population data for 1980 are not yet available, statistics on subdivisions and building permits indicate that growth has been fairly rapid in recent years. Table 7-2 shows the total number of subdivisions recorded in the township in each year from 1971 to 1978 and the number of acres involved in each subdivision. It can be seen that over 1,000 acres of land were subdivided in this eight-year period, the vast majority of it since 1974. The average lot size was one acre. While these data show the total amount of land subdivided throughout the township, it is probably safe to assume that a significant portion of the 1,000 acres was farmland.

Table 7-3 shows the number of residential, commercial, and industrial building permits issued in 1978, 1979, and the first five months of 1980. The data indicate that the pace



Figure 7-1

LOCATION OF WEST HEMPFIELD TOWNSHIP,  
LANCASTER COUNTY, PA.

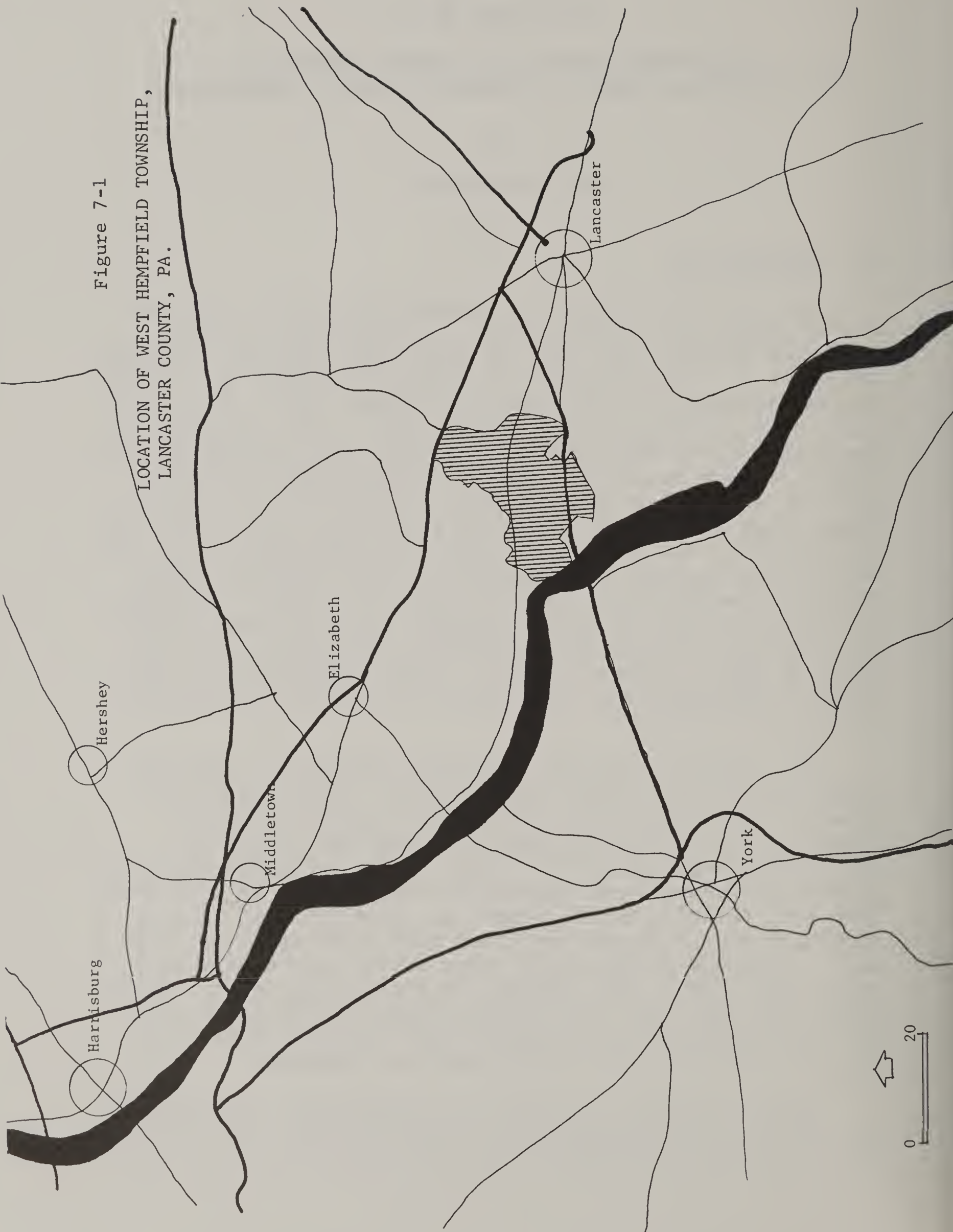


Figure 7-2

MUNICIPALITIES WITH AGRICULTURAL ZONING ORDINANCES  
IN LANCASTER COUNTY

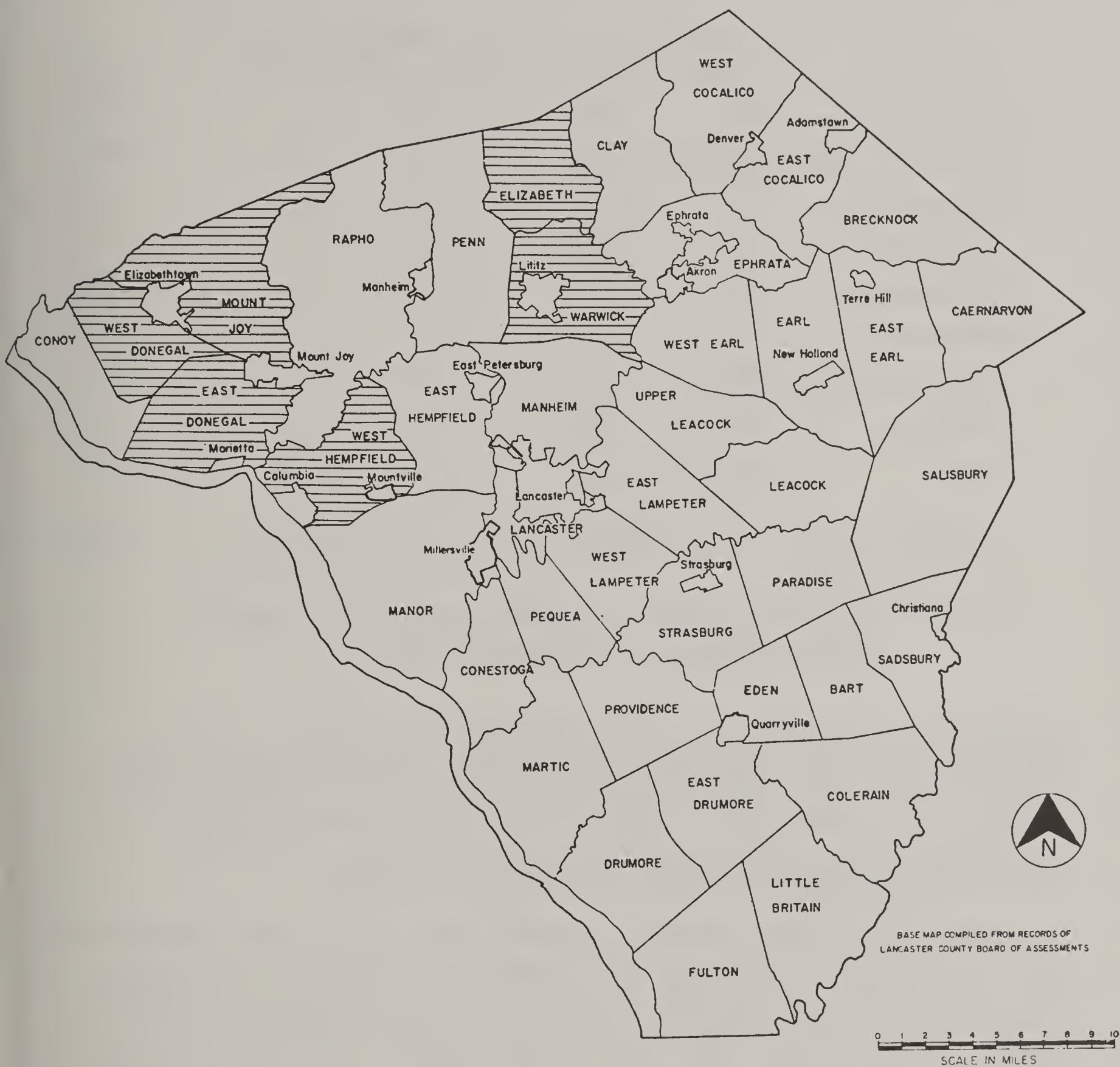


Table 7-1

## LAND USE IN WEST HEMPFIELD TOWNSHIP--1970

	<u>Acres</u>	<u>Percent of Total Land Area</u>
Agricultural	7,728	70.2
Vacant and Conservation	1,013	9.2
Residential	1,134	10.3
Commercial	143	1.3
Industrial	143	1.3
Recreation	44	.4
Community Facilities	165	1.5
Utilities	198	1.8
Roads	<u>440</u>	<u>4.0</u>
Total	11,008	100.0

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Source: Lancaster County Planning Commission, Sketch Plan, Volume 1: Background 1970.

of development in the past two years has been rapid, particularly in 1979, when over 300 residential building permits were issued. Relatively fewer building permits were issued in the first part of 1980 than in the two preceding years, probably due to the high mortgage interest rates and the concomitant slump in the housing industry during this period.

Thus, West Hempfield has grown rapidly in the past decade. All the persons interviewed said that they expected the township to continue to develop in the future, due to its proximity to the City of Lancaster, its excellent school district, and relatively low taxes. In spite of the growth that has occurred, however, much of the township is still distinctly rural in character, with 60 percent of the land (6,577 acres) in farms. According to the Soil Conservation Service Soil Survey, there are 6,124 acres of Class I and II soils throughout the township, with another 3,455 acres of Class III and IV soils. Thus, the farmland in this township represents a valuable natural resource.



Table 7-2

## SUBDIVISIONS RECORDED IN WEST HEMPFIELD TOWNSHIP - 1971-1978

<u>Year</u>	<u>Number of Final Plans</u>	<u>Number of Lots</u>	<u>Acres</u>
1971	10	14	26.5
1972	14	37	27.3
1973	23	115	60.2
1974	21	261	130.2
1975	29	105	133.5
1976	18	153	72.7
1977	40	185	383.6
1978	<u>28</u>	<u>132</u>	<u>168.6</u>
Total	183	1,002	1,002.6

Source: Lancaster County Planning Commission - Annual Reports, 1971 through 1978.

Table 7-3

## BUILDING PERMITS ISSUED IN WEST HEMPFIELD TOWNSHIP - 1978-80

	<u>1978</u>	<u>1979</u>	<u>1980 (January-May)</u>
Residential	119	302	52
Single-family units	113	138	42
Multi-family units	---	155	4
Mobile homes	6	9	6
Commercial	2	8	---
Industrial	3	---	1

Source: Donald Kauffman, Township Zoning Officer, June 2, 1980.

According to the farmers interviewed, field corn is the most important crop grown in the township, followed by soybeans, hay crops, and small grains. A small amount of tobacco is also grown. Much of the grain is fed to a variety of livestock, including hogs, dairy cattle, steers, and chickens. Approximately 25 percent of the farmland is leased rather than owned by farmers. Since Lancaster County is heavily agricultural, an extensive farming infrastructure still exists in the general area, i.e., both markets and implement dealers are located nearby. In 1970, farmers constituted 5.2 percent of the work force of the township. The township's location in the heart of Pennsylvania Dutch country is reflected in the fact that nearly all the major farmers belong to one of the so-called "Plain Sects", especially Mennonites, Dunkers, and Old Order River Brethren. None of the farmers are Amish, however.

## II. HISTORY OF LAND USE CONTROLS

West Hempfield Township adopted its first zoning ordinance in 1968 and the ordinance was updated with slight modifications in 1971. The original zoning map delineated a Rural District, which encompassed all the major farming areas. The permitted uses in the rural district included agriculture, horticulture, single family detached dwellings, schools, churches, parks and playgrounds, public utilities, municipal buildings, and fire houses. Special exception uses (which were permitted upon receipt of written approval by the Zoning Hearing Board) included an airport, hospitals, cemeteries, golf courses, commercial greenhouses, veterinary facilities, solid waste disposal sites, land extracting industries, temporary roadside stands for the sale of agricultural products produced on the property, and home occupations.

While the rural district was intended to remain primarily agricultural in character, the zoning restrictions were not adequate to prevent residential development from consuming large amounts of farmland and making farming difficult in some areas. As noted previously, single-family detached dwellings were permitted by right, the only restrictions being that the minimum lot area was 20,000 square feet and that the building conform to certain setback requirements. Thus, new developments continued to spring up in parts of the rural district after the ordinance was adopted.

The encroachment of residential development into farming areas has created some problems for farmers. Residents sometimes complain of noise and odors associated with certain farming operations, although no nuisance suits have yet been filed. By the same token, the activities of the residents often create nuisances for farmers. The more frequent problems cited by farmers include children riding minibikes through fields, residents planting trees, shrubbery, and gardens beyond the boundaries of their property, trash and other debris deposited in fields (in one instance, a family set up a picnic table in a corn field), and increased runoff from developments, which tend to be located uphill from farms.

While most of these intrusions could probably be classified as annoyances rather than major impediments to farming, occasionally the consequences are serious. For example, one farmer accidentally chopped up metal cans and bottles which were mixed in with the hay he harvested from one of his fields. After the hay was fed to his cattle, several of them died, and autopsies revealed that they had ingested the



pieces of glass and metal. Flooding of cropland caused by runoff from nearby developments has also caused serious problems in some cases. As one farmer succinctly put it, "Houses and agriculture just don't mix well."<sup>2</sup>

These were among the problems which led to the realization that new land use controls were needed if farming were to remain viable in West Hempfield Township. The Lancaster County Planning Commission had been actively promoting efforts to preserve agricultural land since 1974, and five other townships in Lancaster County<sup>3</sup> had already adopted exclusive or preferential agricultural zoning regulations (three of these are almost identical to West Hempfield's ordinance). In addition, several members of the Planning Commission and the Township Supervisors felt that the entire zoning ordinance, including those portions dealing with non-rural districts, was outdated and inadequate to deal with the growing pains of the township. Thus, in 1977, the three Township Supervisors, two of whom were farmers, decided to contract with a Lancaster consulting firm, Huth Engineers, to write a new ordinance. It was decided that the comprehensive plan, which had been adopted in 1968, and the zoning map, which derived from the plan, were essentially sound; therefore, only the text of the ordinance was revised.

The new zoning ordinance drafted by Huth Engineers included much more severe restrictions on development in the rural zone, which covers about 50 percent of the township and contains over 75 percent of the Class I and II soils in the township. The rural zone encompasses land both to the north and south of the ridge, while the ridge itself, which has sewer and water facilities, will be permitted to continue to develop. The Township Planning Commission reviewed the new ordinance thoroughly, as did the Lancaster County Planning Commission. Some minor modifications to the draft ordinance were made on the basis of the comments made by the planning agencies.

In addition, three public hearings were held, at which the Planning Commission and a representative of Huth Engineers presented the major provisions of the new ordinance. While only 15 persons attended the first meeting, the last drew 41. Each meeting lasted about three hours. Virtually no farmers attended any of the meetings. Nevertheless, the bulk of the discussion centered on the provisions of the new ordinance which apply to the rural zone. Several visitors voiced objections to the concept of agricultural zoning, questioning its legality and asserting the rights of farmers to sell

their land for development purposes if they want.

During the public meetings, two of the Township Supervisors and one Planning Commission member, all of whom were farmers, spoke in favor of the rural zone restrictions, citing the importance of preserving prime farmland and the problems with noise and odor that residents encounter when they move into agricultural areas. One of the supervisors noted that land which was not classified as "prime" farmland could probably be rezoned if the property owner desired to sell building lots, although he did not specify what the criteria for defining prime land would be. Another Supervisor noted that most of the farmers in the township favored the new ordinance, although farmers who were not local officials did not come to the meetings to make their views known. One of the farmers interviewed, who is a member of the Planning Commission, noted that the failure of most farmers to attend the hearings was due in large part to the fact that the farmers generally belong to the Plain Sects, which tend to shun political involvement.

In spite of the objections raised by some of the persons who attended the hearings, Frank Burkhart, who was Chairman of the Board of Supervisors, claims that there was no organized opposition to the ordinance. Apparently, one landowner-speculator (not a farmer) tried to enlist the support of other landowners to sign a petition opposing the rural zone restrictions, but was unsuccessful. Thus, after the hearings were held and the ordinance was reviewed and approved by the Lancaster County Planning Commission, it was unanimously approved by the Township Planning Commission. And in January 1978, it was unanimously adopted by the Township Supervisors. The next section describes the provisions of the regulations as they apply to land in the rural zone.



### III. DESCRIPTION OF ORDINANCE

As discussed previously, the boundaries of the rural zone were delineated in 1968, when West Hempfield's comprehensive plan and first zoning ordinance were adopted. These boundaries were not altered in 1978 when the text of the ordinance was revised. Essentially, the zone contains agricultural land, most of which has Class I or II soils. The Township Zoning Officer has estimated that the rural district in 1980 contains 74 farms comprising 5,003 acres of land (this constitutes 45 percent of the land area of the township). Thus, the mean size of farms in the zone is 68 acres. Another 32 farms are located outside the rural zone, and these farms contain 1,574 acres of land. The average size of these farms is less than 50 acres.

As stated in the 1978 ordinance, "the purpose of the Rural District is to 1) identify those areas within the Township where agricultural activities should be encouraged and/or preserved; and 2) provide for the controlled expansion of low density residential development in those areas most likely to remain dependent upon on-site sewer and water facilities" (Section 301.1). Thus, the zone is not envisioned as purely an agricultural preserve, although farming is implicitly recognized as the primary use of the land.

The listing of permitted uses in the Rural Zone is essentially the same as in the earlier version of the ordinance, and includes agricultural uses, horticultural uses, public and private parks and recreation areas, commercial stables, kennels and greenhouses, single family detached dwellings, community utilities, municipal buildings, fire house, grange hall, church, and school. The crucial difference between the 1978 ordinance and the earlier ordinances concerns the minimum lot requirements for single family detached dwellings. The new regulation reads as follows (Section 301.A.1):

#### 1. Single Family Detached Dwelling

- (a) There may be one (1) lot of not less than twenty thousand (20,000) square feet nor greater than one (1) acre for every twenty-five (25) acres and additional fraction thereof that is represented on the effective date of this Zoning Ordinance by an existing deed.



- (b) On a lot represented on the effective date of this Zoning Ordinance by an existing deed that is two (2) acres or more, but is less than twenty-five (25) acres, there may be only one (1) lot not less than twenty thousand (20,000) square feet nor more than one (1) acre.

Thus, the maximum allowable density of single family dwellings is one per 25 acres, unless the parcel is less than 25 acres in size, in which case one house lot is permitted. This system permits every landowner who owns two acres or more to sell at least one housing lot. The one-acre maximum lot size is intended to ensure that land is not taken out of agricultural production unnecessarily. A significant aspect of this density provision is that the permitted number of house lots is calculated based on the size of each parcel as it existed on the effective date of the zoning ordinance. Therefore, a landowner may not increase the number of allowable lots by subdividing his property into smaller parcels.

The rural regulations under the 1978 ordinance designate several special exception uses, which are subject to certain specified restrictions and require written approval by the Zoning Hearing Board. The special exceptions are home occupations, medical and dental clinics, veterinary facilities, private fish and/or game club, cemetery, mobile home for farm employees, residential conversion (of a single-family detached dwelling to a two-family dwelling), and temporary roadside stand for the sale of agricultural and/or garden products (at least 50 percent of such products must have been produced on the property on which they are offered for sale or on adjacent properties). None of these special exceptions are expected to interfere significantly with agriculture, and in fact permitting veterinary facilities, mobile homes for farm employees, and roadside stands would tend to support farming activities. One of the farmers interviewed specifically mentioned that farmers benefit from being allowed to set up roadside stands.

The third category of uses which may be permitted in the rural zone are the conditional uses. A conditional use is defined in the ordinance as "A use which may not be appropriate to a particular zoning district as a whole, but which may be suitable in certain localities within the district only when specific conditions and factors prescribed for such cases within this ordinance are present. Conditional uses are allowed or denied by the Board of Supervisors after recommenda-

tions by the Planning Commission" (Section 201). Thus, the granting of a conditional use is similar to a rezoning, insofar as both must be reviewed by the Planning Commission and approved by the Board of Supervisors. Of course, a rezoning provides a landowner with a range of options, while the issuance of a permit for a conditional use allows only that use.

The conditional uses for the Rural Zone (Section 301.2.C) include an airport, hospital and nursing home facilities, an outdoor firing range, land extracting industries, and radar and television transmitting towers and broadcasting facilities. In addition, single family residences on lots of one acre or more are permitted if all the following conditions are met:

- (a) That the land proposed for such development is not suitable for agricultural purposes by virtue of its soil type, steepness of slope, or wooded character.
- (b) That such tract by virtue of its unique location or limited size cannot be reasonably farmed.
- (c) Where the conditions of subsection (a) and (b) above are shown to apply, that access roads to such tract would not significantly interfere with other lands within the Rural District by creating new tracts of land which are less than ten (10) acres or which otherwise render agricultural uses impractical.

These criteria are not fully specified in the ordinance, although the zoning officer, Donald Kauffman, indicated that soils other than Class I or II would probably be considered unsuitable for agriculture, while the size limit is implied to be ten acres.

Section 702.9 of the zoning ordinance also merits some discussion, since it defines a number of agricultural use standards designed primarily to protect nonfarm residents from possible nuisances created by certain farming activities. These standards, as listed in the ordinance, are as follows:

## 702.9 AGRICULTURAL USE STANDARDS

The following restrictions shall apply in all districts in which agriculture is permitted.

- A. No farm building or any other outbuilding shall be constructed closer than fifty (50) feet to any property line.
- B. All grazing or pasture areas shall be fenced.
- C. The construction or operation of a building for the cultivation of mushrooms shall be prohibited within the R-1, R-2, and R-3 Residential Districts.
- D. No slaughter area or manure storage shall be established closer than one hundred (100) feet to any property line.
- E. A lot for the raising, maintenance and/or breeding of livestock or poultry (excluding pets such as dogs, cats, rabbits and the like) shall not be less than five (5) acres in the R Rural District or less than ten (10) acres in the R-1, R-2, and R-3 Residential Districts. No structure used for the housing of livestock or poultry manure pile shall be located nearer than one hundred (100) feet to any property line or three hundred (300) feet to an existing residential dwelling whichever is the greater distance.
- F. On lots less than ten (10) acres, not more than one (1) head of livestock or fifty (50) fowl shall be permitted for each acre or fraction thereof of lot area.
- G. No high density or confined handling of poultry, cattle and hogs shall be permitted except as a special exception pursuant to the provisions for granting of such special exception.

The Zoning Officer, who is also a part-time farmer, indi-



cated that subsections A through F do not pose any significant problems for the major farmers in the township. The last restriction, however, which prohibits high density handling of poultry, cattle, and hogs except as a special exception, has already created difficulties for one farmer. This farmer wanted to establish a confined 480-sow hog raising operation on his 100-acre farm, and therefore was required to obtain a special exception permit from the Zoning Hearing Board (the Zoning Officer noted that any livestock operation which exceeds one large animal per acre of land is likely to be considered "high density"). Nearby residents passed and signed petitions to protest the operation, fearing that noise and odors would be a problem. At the first public meeting, heated debates lasted over five hours. The Zoning Hearing Board, unable to reach a decision, visited a similar operation at New Bolten Center in Chester County in order to make a better assessment of its probable effects. Eventually the Board granted the permit but imposed a rather lengthy list of restrictions regarding the management of the farm.

Neither the farmer nor the residents were satisfied with this compromise, and so both appealed to the Court of Common Pleas. The Court eventually ruled in favor of the farmer, removing most of the restrictions which had been imposed by the Zoning Hearing Board, although the land used for the disposal of wastes was not to be sold. The farmer obtained the permit, but then decided not to go ahead with his plans after all. Apparently, he feared that if the residents detected any odor from his farm, he would have to start fighting nuisance suits. So the farm has now been put up for sale. (It is still zoned rural, however.)

In sum, the West Hempfield zoning ordinance, while designed to protect agriculture and preserve prime farmland, forces farmers to obtain special exception approval in order to undertake certain activities. In addition, the ordinance provides opportunities for limited residential development through the normal permitting process and the granting of conditional uses. It is also possible, under certain circumstances, to amend the zoning map, i.e., to have land rezoned from rural to another type of district. The rezonings which have thus far taken place are discussed in the next section.

IV. EFFECTIVENESS

Since the ordinance was updated in 1978, there have been four official petitions for rezonings, all of which have been approved by the Township Planning Commission and the Board of Supervisors. The first zoning amendment was granted in 1978, when 48½ acres were rezoned from Rural to R-2 (medium density residential). The major reason given for granting the petition was that water and sewer facilities were available. In the same year, a 6.4-acre tract located in the rural zone was rezoned: 3.6 acres to R-2, and 2.8 acres to C-1 (neighborhood commercial). The reasons given were that a nonconforming office already existed at the site, it was steep and wooded, and sewer and water were available. In both these cases, the land had access to sewer and water because it was adjacent to already-developed areas. Therefore, the rezonings did not break up a contiguous pattern of farmland.

In 1979, one rezoning was granted, which reclassified 30 acres of land from Rural to Industrial. Approval was granted because the land was steep and wooded, and because it had railroad frontage.

The final zoning change, and the one which generated the most controversy, was granted in 1980 to the Musser Potato Chip Corporation. In this case, 109 acres of prime farmland were rezoned from Rural to Industrial, in order to allow the potato chip company to expand its operations significantly. The Township Supervisor and two members of the Planning Commission who were interviewed all said that this case was extremely difficult to decide, and the Planning Commission met three times to discuss it. No one denied that the land was prime farmland, but Musser's is an industry which has been in West Hempfield since the 1940s, it is a major employer in the area, is a "clean" industry, and the firm has always acted responsibly toward the community. Therefore, after much soul-searching, the Planning Commission unanimously recommended the rezoning, and it was granted by the Supervisors. However, one of the Planning Commission members, a farmer, now says that he would probably change his vote if he had it to do over again, and approve the rezoning of only the fraction of the parcel which is needed for expansion in the near future.

In addition to the rezonings, which converted a total of 194 acres from rural to other zoning classifications, three housing lots have been approved as "conditional uses," due to their location in wooded areas. Four houses have also been built through the standard permitting process; i.e., under

the rule that one lot may be sold for every 25 acres or fraction thereof. No one who was interviewed felt that houses built through the granting of conditional or standard use permits pose any real threat to agriculture in the area.

While no petitions for rezoning have yet to be officially denied, the Zoning Officer noted that he receives a number of calls each year requesting information about whether or not certain parcels could be subdivided into building lots. If the parcels are located in the rural zone and contain mostly prime farmland, he tells them that subdivision is out of the question, and thus far no one (except Musser's) has pursued the issue. Therefore, the ordinance may be preventing certain areas from being developed which would otherwise be taken out of agricultural use.



V. EFFECTS OF OTHER PROGRAMS

The persons interviewed were questioned concerning the effects of other governmental programs in either undermining or supporting the agricultural zoning program. The reaction toward the Lancaster County Planning Commission was mixed. One member of the Township Planning Commission felt that the county planners were generally supportive of efforts to preserve agriculture, and cited the county's approval of the zoning ordinance and independent efforts to develop a county-wide agricultural preservation program (the county is studying the possibility of instituting a right-of-preemption system). Another Township Planning Commission member, however, felt that not enough of the farmland in West Hempfield is designated as long-term agricultural land in the county's comprehensive plan. A series of overlay maps prepared by the township do show that the county's designated agricultural areas are less extensive than the area which is now included in the Rural Zone of the township's zoning ordinance.<sup>4</sup> As one Planning Commission member put it, "They [the County] seemed to have nothing but wall-to-wall houses in their plan [for this township]".

Another problem with the County government which was cited by several of the respondents is related to the fact that the county administers and enforces county subdivision regulations for the township (townships have the option of adopting their own subdivision ordinances; otherwise they are subject to the jurisdiction of the Lancaster County Subdivision and Land Development Ordinance, and the County Planning Commission then has final approval power). Township officials feel that the county has not been fully supportive of efforts to preserve farmland in the administration of the subdivision regulations. Apparently one developer filed a subdivision application for a tract of prime farmland shortly before the zoning ordinance was adopted in 1978. While legally the county had no choice but to process the application, the township zoning officer requested that no extensions or waivers be granted to the developer in getting the subdivision recorded. However, the county apparently did grant an extension in spite of the township's objections. Because of this and other incidents (not related to the protection of agriculture), the township is considering adopting and administering its own subdivision ordinance.

The township has recently passed another ordinance which is intended in part to help farmers to avoid one of the adverse impacts of development. As noted previously, most of the

development has occurred in upland areas, particularly on the ridge which bisects the township. One effect of this situation has been an increase in the volume and rate of stormwater runoff and erosion from such areas, which in some cases has resulted in flooding and sedimentation in the relatively lowlying farming areas. In order to alleviate these problems, in 1980 the Township Supervisors passed the "Stormwater Management and Erosion Control Ordinance for West Hempfield Township." This ordinance requires the submission of an Erosion and Sedimentation Control Plan for all new developments. The plan must contain calculations of runoff and erosion, and describe the various mitigative measures which will be undertaken to control such runoff and erosion. The ordinance specifies design criteria for various erosion control measures. Runoff control facilities are to be designed "so as to limit the anticipated peak discharge from the entire development from a two-year storm event to two-year peak discharge prior to development. The calculations for the undeveloped site shall presume a good sod cover" (Section 3.01.] .2.b). Therefore, if an area which was previously cropland is developed, peak discharge must be controlled at its expected level assuming the land had a good sod cover rather than at the actual pre-development discharge from the cropland.

Another strong feature of this ordinance is that clear provisions are made to ensure the maintenance of runoff control structures. Any structure which is located on private property must be maintained by the property owner, and such responsibilities must be specified in the deed in the form of a deed restriction. The Township is authorized to administer and enforce the ordinance, and is directed to inspect all permanent facilities periodically. Each Erosion Control Plan is to be reviewed by the municipal engineer, the Lancaster County Conservation District, and the Lancaster County Planning Commission, although the municipal body has final approval power.

Township officials expect that the stormwater and erosion control ordinance will be an important factor in helping farmers to continue to farm near areas which are undergoing rapid development. However, they acknowledge that if the current growth trends continue other problems associated with the proximity of nonfarm development to agriculture will become increasingly severe. For this reason, several farmers suggested that certain Federal agencies, such as the Farmers Home Administration and the Small Business Administration, should not help to promote growth in Lancaster County by providing funds for development. Instead, they feel that such funds should

be directed to regions which are economically depressed and which do not contain large amounts of prime farmland, such as Wilkes-Barre or Scranton, Pa. As one farmer noted, Lancaster County's major resource is farmland, and the value of this resource should be recognized at all levels of governments.



VI. EFFECT OF THE PROGRAM ON LAND PRICES

Most of the officials interviewed said that it is too early to tell what effect the new zoning ordinance will have on land prices in the township. One farmer estimates that farmland sold for farm use averages \$3,500 per acre, while land sold for residential development is worth \$6,000 or more per acre, with industrial land selling for up to \$10,000 per acre. The Farm Credit Service, which analyzed "typical" sales of farmland to farmers from January 1977 to February 1980, estimated the value of farmland in West Hempfield to be \$3,415. Therefore, if the zoning restrictions are strictly enforced in the future, it seems likely that land prices would stabilize in this range or lower. However, one farmer anticipates that there will still be speculation on the fringe of the rural area, particularly in areas which are near sewer and water lines, since these areas may be rezoned in the future. In addition, he noted that farmers who buy land in order to expand their existing farms often are able to pay very high prices, which tends to keep land values high. At any rate, prices do not appear to have dropped significantly yet--one 200-acre farm in the rural zone was recently sold for \$1 million, or \$5,000 per acre.

VII. POLITICAL PRESSURE AND LEGAL CHALLENGES

According to the farmers and officials interviewed, there is no real consensus among the residents of the township on the merits of restricting land use for the purpose of protecting agricultural land. This holds true for the farmers as well. Those who were interviewed generally favor agricultural zoning, and said that many other farmers share their views, particularly if farming is their sole occupation and they have children who intend to take over the farm. However, apparently some farmers feel that the current zoning restriction unfairly restricts a landowner's right to sell property at the price which the market will bear. Everyone interviewed agreed that the current members of the Planning Commission and the Township Supervisors support the concept of preserving farmland and will enforce the ordinance. Rezoning and conditional uses will be permitted for certain individual cases, primarily because when the new ordinance was adopted, the boundaries of the Rural Zone were not altered. Therefore, the zone is not a true agricultural zone, since it includes areas which may be more suitable for development due to their proximity to sewer and water lines, transportation routes, or because of poor soils or unsuitable topography. Nevertheless, the local officials currently in office are generally dedicated to preserving prime farmland and minimizing conflicts between farmers and nonfarm residents.

No one was willing to predict with certainty, however, what the future will hold for farming in West Hempfield. Apparently the political climate is volatile enough that everyone acknowledged the possibility that future Township Supervisors may not be as supportive of agricultural zoning as the present ones are. There is particular concern over what will happen if and when the residential districts are essentially filled to capacity. For this reason, at least two Planning Commission members are starting to favor more high density development and clustering so that the growing population can be accommodated without using up large amounts of land. However, the zoning ordinance permits cluster development only in the R-3 district, which covers a small proportion of the township, and apparently most local officials do not feel that high density development is beneficial to the community.

No legal challenges have yet been filed against the West Hempfield ordinance, nor against other similar ordinances in Lancaster County. Furthermore, the Pennsylvania Supreme Court has not yet heard any cases dealing directly with agricultural zoning. Therefore, both county and township officials were un-



certain about what would happen if there were such a challenge. One township official expressed concern over the fact that the comprehensive plan was not updated when the text of the zoning ordinance was in 1978, but a county planner noted that the Pennsylvania Municipalities Planning Code (Act 247) and other court cases related to land use regulation have tied planning and zoning together rather loosely. Thus, he felt this would not be a problem for the township. But no one is certain whether or not the overall concept of agricultural zoning would be upheld in the state courts.

In sum, it is probably too early to assess the long run effectiveness of the West Hempfield zoning ordinance in preserving farmland. What does seem fairly certain is that without the ordinance, agriculture would continue to decline as the Lancaster area continues to grow. The situations of two farmers, both of whom are on the Planning Commission, illustrate the types of problems and dilemmas facing farmers in this township. One of the farmers, E. Robert Nolt, has recently retired and is now leasing his farm and still living in the farmhouse (in which he was born). While Mr. Nolt and his wife have no intention of selling the farm while they are alive, neither of their two children intends to take it over. Thus, he has mixed emotions about his farm being zoned for agriculture, because while he would like to see it continue to be farmed, he also wants his children to be able to reap the benefits of his investment to the extent possible. And since the farm is located near the edge of the rural district and near sewer and water lines, Mr. Nolt or his children may be able to have it successfully rezoned sometime in the future.

The problems facing Jay Wissler exemplify those of a young farmer trying to get started in the township. Mr. Wissler is a native of neighboring East Hempfield Township, where his father continues to farm even though he owns a small farm and is completely surrounded by development. Since Mr. Wissler sees little future in his father's farm, he is trying to become established in West Hempfield. Currently, he leases all the land he farms and his wife works as a schoolteacher to bring in needed extra income. While he is dedicated to farming and wants to stay in the area, he seriously doubts that he will ever be able to buy a farm in West Hempfield or perhaps even to continue farming at all, because land prices are out of reach and rents are high. Nearby development also creates a variety of minor nuisances. Nevertheless, Mr. Wissler will continue to farm as long as possible, and is hoping that the agricultural zoning and perhaps other programs will reverse the trend of development and stabilize or lower farmland prices.



He also believes that unless agricultural land is protected, we as a nation may be jeopardizing our food supply in the future. But whether he and others will still be farming in West Hempfield Township ten or twenty years from now still remains to be seen.

FOOTNOTES

1. Interview with Donald Kauffman, Township Zoning Officer, June 2, 1980.
2. Jay Wissler, June 9, 1980.
3. In neighboring York County, seven townships had adopted agricultural zoning by 1978.
4. According to a county planner, the County's land use plan for West Hempfield is based on past growth trends, its proximity to major transportation routes, and the fact that parts of the rural area do not have class I or II soils.

Case Study No. 8

PHASED DEVELOPMENT AND AGRICULTURAL LAND:  
BROOKLYN PARK, MINNESOTA

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## Case Study No. 8

### PHASED DEVELOPMENT AND AGRICULTURAL LAND: BROOKLYN PARK, MINNESOTA

by

William Toner

#### I. INTRODUCTION

The City of Brooklyn Park, Minnesota, is located roughly 10 miles northwest of Minneapolis (See Figure 8-1). The City is in the second ring of suburbs surrounding Minneapolis and is bordered on the east by the Mississippi River; on the south by the City of Brooklyn Center, City of Crystal, and the City of New Hope; on the west by the Cities of Maple Grove and Osseo; and on the north by the City of Champlin. (See Figure 8-2).

Brooklyn Park is one of the fastest growing cities in the Metropolitan area and it has the largest population of any city in Northern Hennepin County. Between 1970 and 1977, the City's population increased nearly 38% while the Twin Cities Metropolitan area grew at an average of 6%.<sup>1</sup>

In 1950, Census figures placed the city's population at 3,065 people.<sup>2</sup> By 1960, the population jumped to 10,197; by 1970, 26,230; and Metro Council -- Metropolitan Council of the Twin Cities, the area's regional planning agency -- estimates the 1980 population at 41,000.<sup>3</sup> In the coming decade, Metro Council estimates that the City will grow to 50,000, and by the year 2000 population is expected to reach 58,000 people.<sup>4</sup> The City Community Development Department figures the buildout population in excess of 100,000 people.

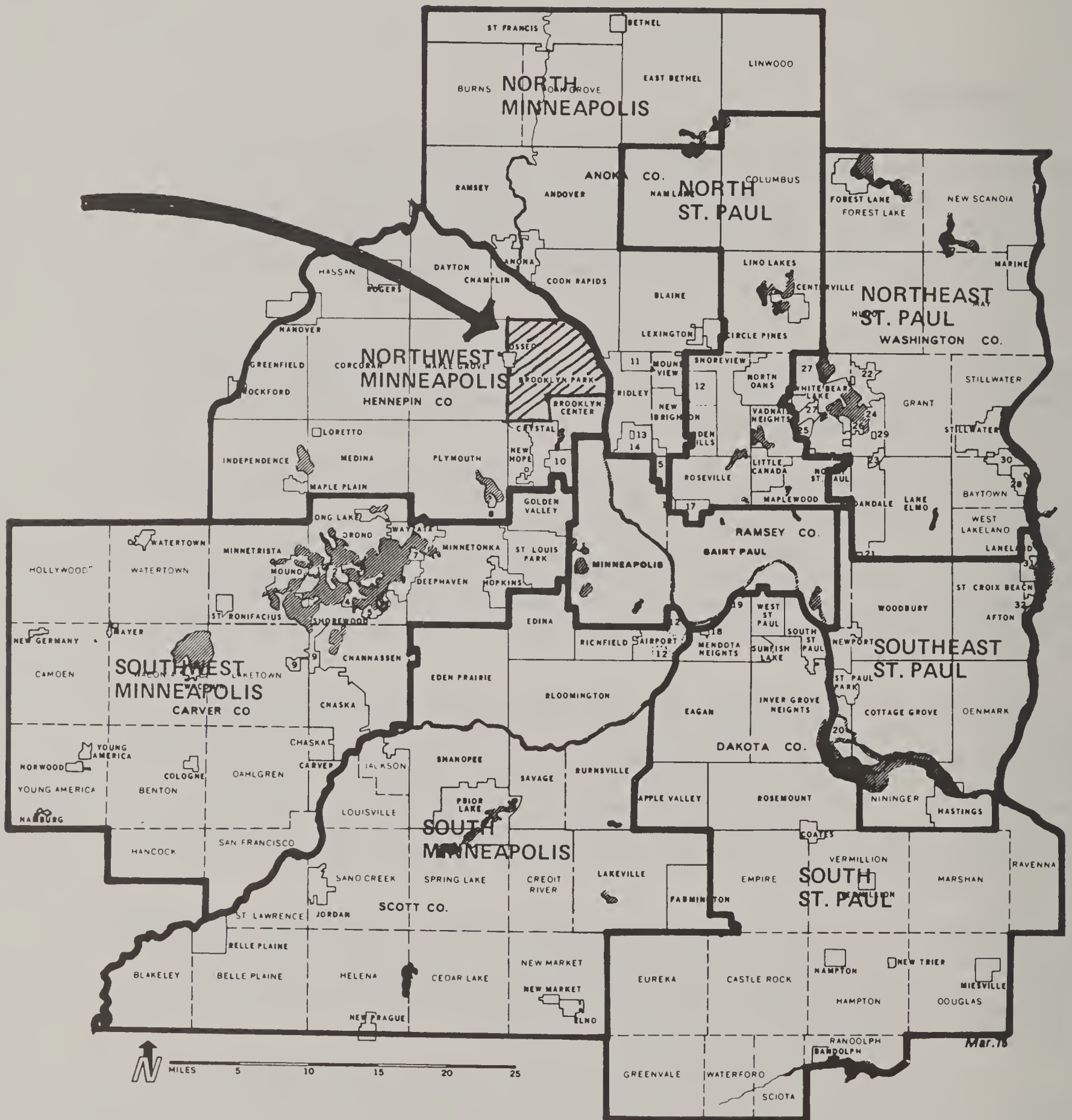
Brooklyn Park's economy is dominated by urban related employment. Current estimates by the Metro Council place 1980 employment at 8,000.<sup>5</sup> The City has a well developed commercial and industrial base with over 260 acres in industrial parks. The fiscal health of the City is good, as evidenced by its low bonded indebtedness, an assessed value per person of \$2857, (taxable value), recent declines in the City's tax rate, and a net contribution of tax revenues to the region under the Metropolitan Fiscal Disparities Act.<sup>6</sup>

Brooklyn Park offers housing opportunities over a wide range of incomes.<sup>7</sup> Multi-family units make up approximately 40% of the housing stock. Median price for a three bedroom, single family home is \$68,000. The city contains the second largest number of Section 235 homes (subsidized for low and moderate income families) in suburban Hennepin County.

The City covers 17,272 acres. With the estimated 1980 population at 41,000, the population per acre is 2.37 and is expected to rise to 3.35 per acre by the year 2000. The City maybe divided into an extensively urbanized southern half of approximately 8500 acres (1800 acres remain to be developed) and a rural northern half of slightly more than 8500 acres. Well over 95% of the housing units are located in the southern half of the City as are the great bulk of all urban activities (See Figure 8-3).

Figure 8-1

LOCATION OF BROOKLYN PARK, MINNESOTA



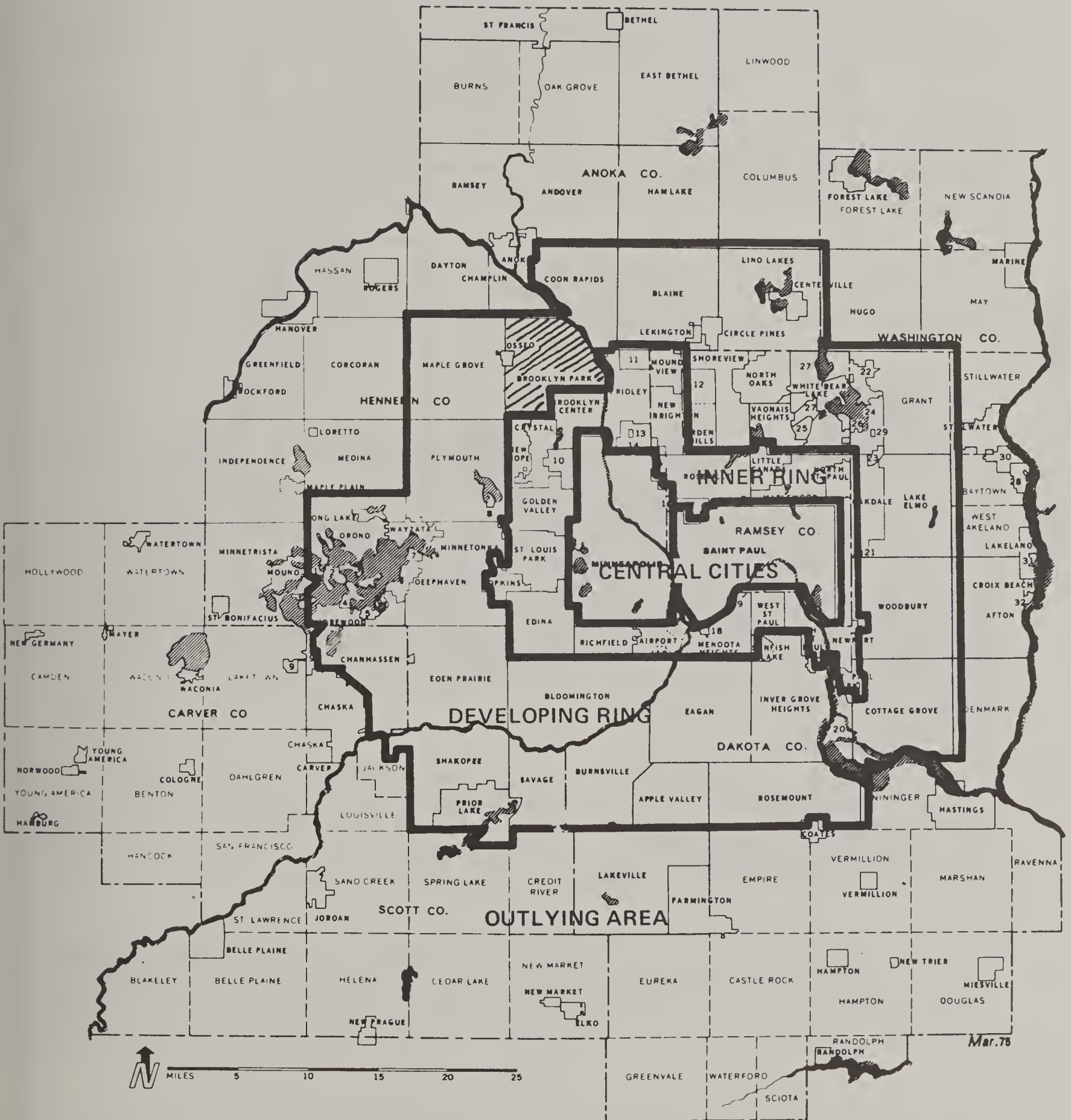
Source: Metropolitan Council, Development Framework,  
Metropolitan Council, St. Paul, Minnesota,  
1975, Page 20.



Figure 8-2

BROOKLYN PARK IN THE METROPOLITAN AREA

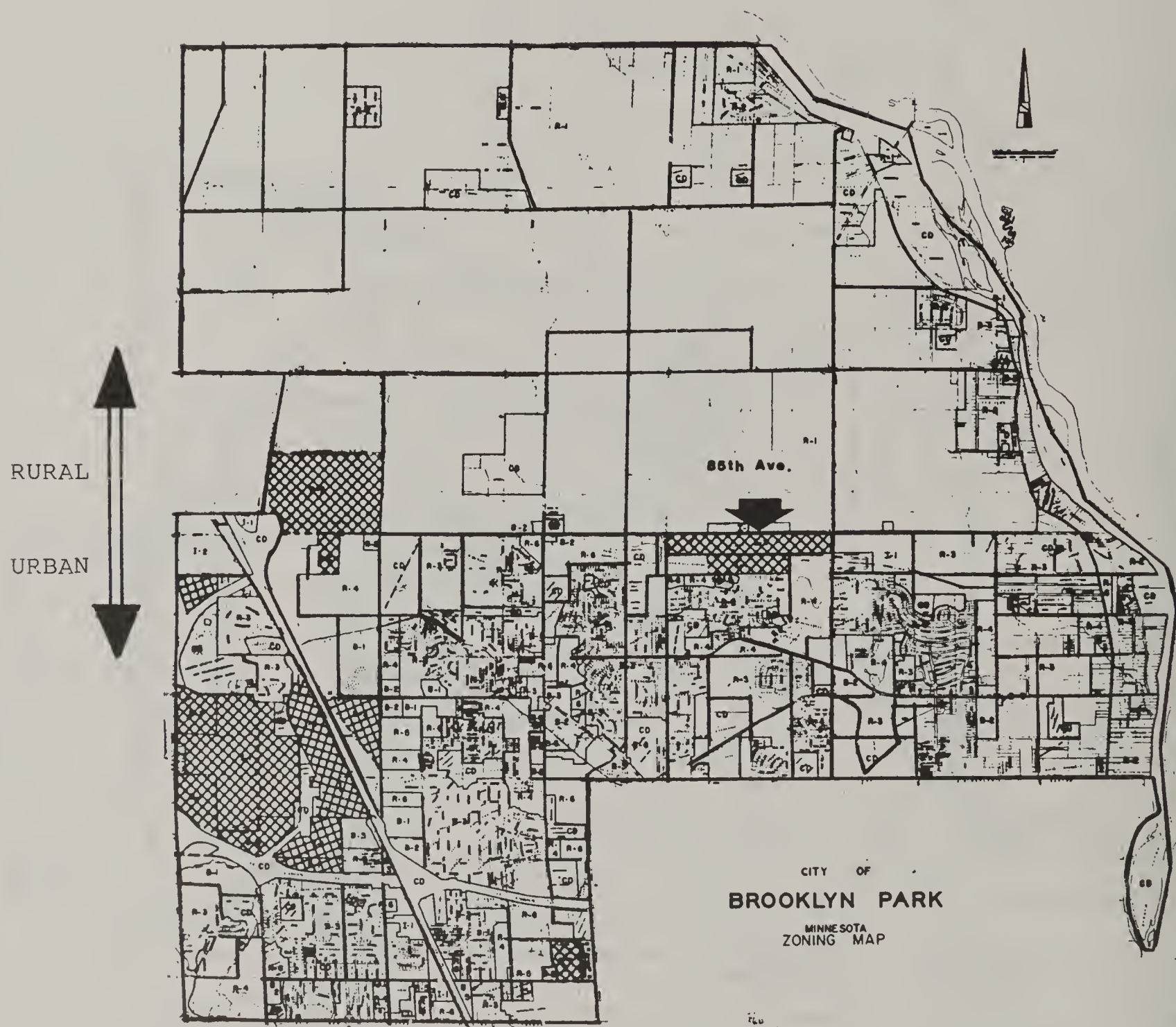
BROOKLYN PARK, MINNESOTA: 



Source: Metropolitan Council, Development Framework,  
Metropolitan Council, St. Paul, Minnesota  
1975, Page 22

Figure 8-3

BROOKLYN PARK, MINNESOTA: PATTERN OF DEVELOPMENT



Source: Adapted from City of Brooklyn Park, Minnesota, Zoning Map, Brooklyn Park, Minnesota, 1979



Of the twenty seven square miles in Brooklyn Park, most are relatively flat, with sandy soils, and characterized by a high water table. Topographic relief becomes sharper as one approaches the bluffs bordering the Mississippi, but most of the land is flat to gently rolling. Although the land in the southern half of the City is urban or urbanizing, land use in the northern half is principally agricultural (See Figure 8-3). The 8500 plus acres produce sod, potatoes, corn, beans, and other vegetables. The land is farmed by 20 to 30 farmers. The soils are non-prime and, because of the high percentage of sand, require irrigation for most crops. Agricultural land sells on the average at \$1000 per acre.

The agricultural service infrastructure has virtually disappeared from Brooklyn Park. The few remaining farmers look to other areas for feed, implements, seed, service, and repair facilities. Nevertheless, farming continues in the northern half although long term agricultural investments, according to farmers, are not being made.

The City has never adopted any formal policy to preserve or protect its agricultural land. Instead, the City has adopted a "wait and see" attitude, setting aside the agricultural areas for future growth, but leaving the decision to future officials. In the interim, the City has a policy of keeping the lands in agricultural use as part of their overall effort at growth management. And, since 1962, the City has been able to channel the vast majority of new residential, commercial, and industrial development into the southern half of the city, while keeping the northern half in agricultural use.

## II. HISTORY

Brooklyn Park established one of the first growth management systems in the nation.<sup>8</sup> Indeed, by the time the first steps in growth management were taken, the phrase 'growth management' had yet to enter the planner's lexicon. The system evolved out of the pipe -- constraints placed on development by the financing costs and availability of storm sewers and sanitary sewers.

By 1960 Brooklyn Park (incorporated in 1954) had experienced its first great surge of population growth. Between 1950 and 1960 the City's population had jumped from 3,065 to 10,197. The vast majority of the new development went into the southern half of the city which lay square in the path of metropolitan growth extending northwest from the Twin Cities.

The southern half of the City was dominated by a single drainage basin called Shingle Creek. Because of seasonally high water tables and a history of flooding, adequate drainage was a critical concern. So, too, was the matter of special assessments needed to finance the continuing development of a storm sewer drainage system. This system was being developed to service the southern half of the City.

The northern half, however, was another matter. This sector, too, was served by a single drainage system but it did not have a storm sewer drainage



system. Further, city officials, most of whom were farmers or large landowners, were well aware that development in the northern half would compound flooding problems in the south. Moreover, if development were to proceed in the north, special assessments would be required to handle storm drainage and perhaps sanitary sewers. At the time, the average cost of these assessments per acre in the south were equal to the average price of land per acre in the north. Thus, officials were reluctant to push new development into the north -- it was expensive.

In 1962, the City Council adopted subdivision regulations which required developers to provide adequate storm drainage. The City Engineer was required to prepare reports on the drainage feasibility of new development. In effect, this policy cut off development in the northern half of Brooklyn Park (north of 85th Avenue) since developers would have to bear the cost of extending storm sewers into the northern half.

The Sanitary Sewer District was also formed in 1962. To complement the storm sewer policy, 85th Avenue became the northern most boundary of the newly formed district. Only landowners in the southern half of the city (south of 85th Avenue) would be assessed for improvements to the system. This, in turn, exempted the landowner/farmer north of 85th from assessments which would force conversion of the land into urban use.

In 1967 the Minnesota Legislature passed Agricultural Property Tax Law -- commonly called the Green Acres law.<sup>9</sup> This law provided that a landowner with 10 or more acres could receive preferential assessment on land in agricultural use. The Law, as amended in 1969, also provided for deferral of special assessments. Penalties under the program were quite low. Sale of the land or disqualification of the owner would result in a penalty based upon the difference in assessments (agricultural use vs nonagricultural use) for the previous three years. Deferred special assessments would be due within 90 days of sale or disqualification.

The effect of the Green Acres law in Brooklyn Park was to reinforce the north/south division along 85th Avenue. Property owners in the north had strong incentives to enroll their land under the program since the potential for development, due to storm and sanitary sewer constraints, was quite low. The deferral of special assessments also provided them with additional insurance that the land would not be developed -- at least anytime soon.

In 1968, the Council adopted a policy which required new development to hook up to available water and sewer lines. The policy was also to discourage development which was not located next to available utilities.

In the same year, the City began work on its first comprehensive plan as well as special water and sewer studies. The water and sewer studies first mentioned the notion of phasing development north of 85th Avenue in line with the availability of water and sewer lines.

By 1969 the sewer capacity of Brooklyn Park (and other nearby cities) was overloaded. The City Council placed a moratorium on all new development. Shortly thereafter a metropolitan sewer agency installed a new line to expand

the capacity of the system serving Brooklyn Park and other jurisdictions. The moratorium was withdrawn and development in the south proceeded. But it was interesting to note that given the excess capacity, the city maintained its basic development framework set in 1962.

In 1972 the City's first comprehensive plan was completed. The Public Works department had also formalized the notion of development districts north of 85th Street (See Figure 8-4). These development districts, 5 in total, would be phased into urban use following the extension of storm sewers. The first such district to open was scheduled for the period 1975-1980, but by May 1980, this district had yet to open for urban development. The basic pattern for development was based on historical trends, generally following a south to north extension.

In March 1974 the City amended its zoning text and map to bring the northern half of the City in line with the phasing policies. Before March 1974, the area had been zoned for residential use (agriculture was also a permitted use) with a minimum lot size of 13,500 sq. ft. In select areas of the north, some spot development was occurring. However, the 13,500 sq. ft. minimum was clearly inadequate for on-site septic and wells. Thus, in 1974, the ordinance was changed to require a minimum lot size of 5 acres. At that time, five acres was the maximum available under the law.

One year after Brooklyn Park amended the zoning ordinance, the Metropolitan Council adopted their development framework for the region (1975).<sup>10</sup> The Council, created in 1967, had the responsibility for planning of parks, transportation (highways and airports), and sewers throughout the region. The development framework represented the culmination of this charge (For a complete discussion, see Case Study Number 14.).

The development framework placed Brooklyn Park in an Urban Service category. According to the Council, this means that the City was prepared for urban development as key services were available. But the framework also incorporated the 1962 policy of Brooklyn Park (as amended through the years) to develop the south first and the north, in phases, later. Thus, the development framework categorized the southern half as immediately available while scheduling the northern half for additional growth in the period 1981 to 1990.

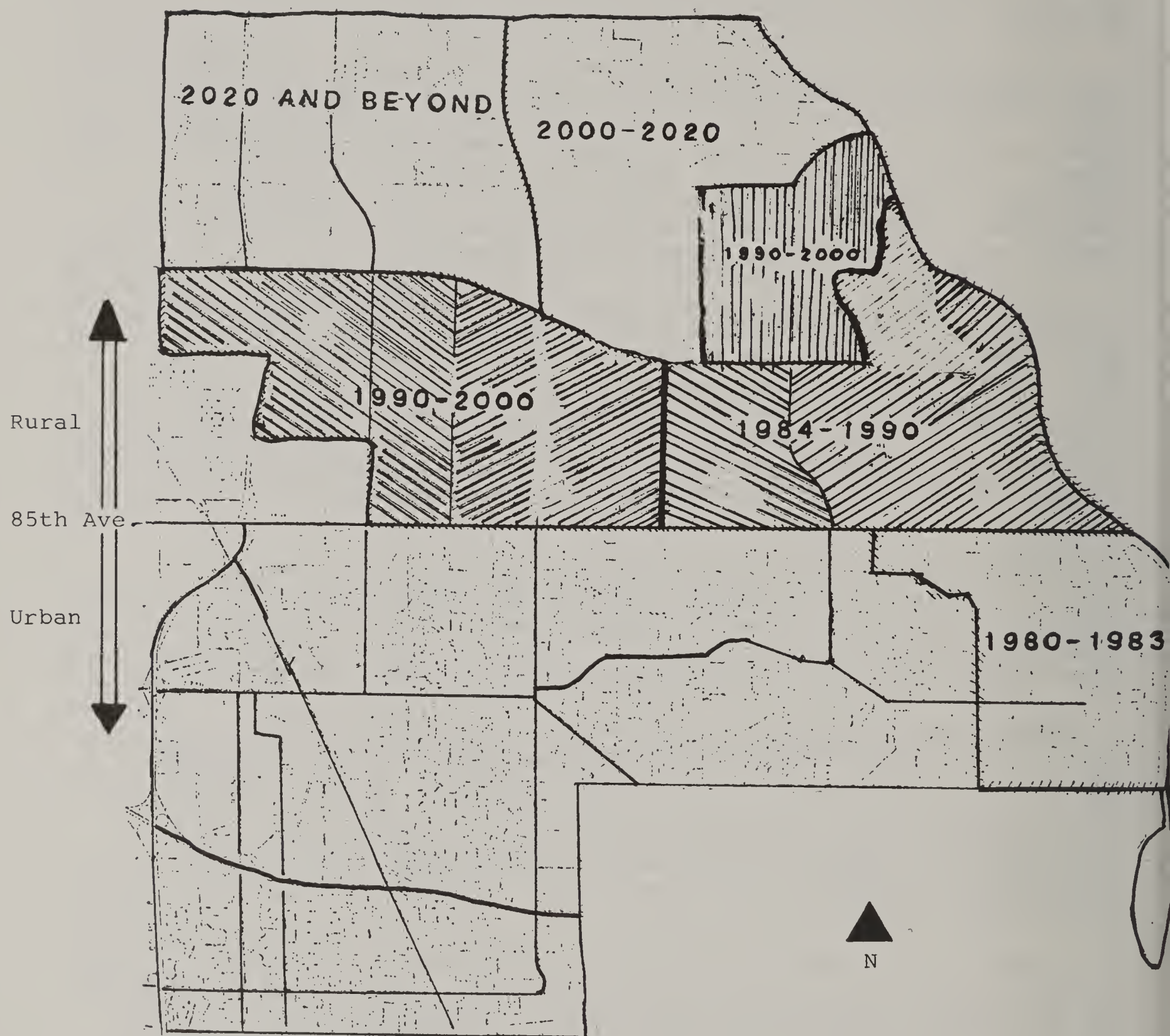
One year later, in 1976, the Minnesota Legislature passed the Metropolitan Land Use Planning Act which affected cities, counties and townships of the Metropolitan area in the following way.<sup>11</sup> Jurisdictions were required to prepare comprehensive plans which covered, at a minimum, land use, public facilities, and methods of implementing the plan. The Metro Council is to review these plans for conformance to the development framework. If the plans conform, they are approved. If not, the plan will not be approved until conformance is evident.

Because the Metro Council controls the extension of sewer interceptors, the effect of the new Land Use Planning Act was to support basic policy



Figure 8-4

BROOKLYN PARK, MINNESOTA: PHASED DEVELOPMENT



Source: Adapted from Department of Community Development and Planning, City of Brooklyn Park, Minnesota, Growth Management Phased Areas Map, No Date.



of phased development by Brooklyn Park. Indeed, the development framework and subsequent Land Use Planning Act emphasizes the notion of phased extension of public facilities as the principal method of growth control. One observer noted that the idea for this policy grew out of the Brooklyn Park experience.<sup>12</sup>

Currently, the City is completing its second comprehensive plan, which is partially in response to the requirements of the Land Use Planning Act. The City has retained the north/south division as well as the idea of phased development districts in the north. The principal change in those development policies pertain to the timing of new development. As the rate of growth has slowed in the past two years, the schedule for opening the north has been delayed. The first district is now scheduled to open between 1984 and 1990 -- the last districts, located in the extreme northwest, is scheduled for 2020 and beyond (See Figure 8-4).

### III. PROGRAM DESCRIPTION

#### Metropolitan Land Use Planning Act (1976)

The Land Use Planning Act of 1976 contains several requirements which bear on Brooklyn Park's growth management plan. Basically, the Act grants increased planning and review authority to the Metropolitan Council while calling for additional planning and regulatory measures from local government.

The Metropolitan Council, under its enabling authority of 1967, is required to prepare and adopt plans for Metropolitan systems including sewers, highways, airports, and regional parks. The Land Use Planning Act extends this authority by requiring the Council to prepare and transmit a Metropolitan Systems Statement which, at a minimum, must include: "The timing, character, function, location, projected capacity and conditions on use of existing or planned metropolitan facilities, as specified in the Metropolitan Systems plan..."<sup>13</sup> The statement must also include population and economic projections as well as information on housing requirements for the regional jurisdictions.

Local units of government are then required to prepare comprehensive plans which contain, at a minimum, a land use plan, public facilities plan, and implementation program. The land use plan must "designate the existing and proposed location and intensity and extent of use of land and water for agricultural, residential, commercial and industrial and other public and private purposes."<sup>14</sup> The land use plan must also contain an element to designate and protect historical and environmental sites. Also required is a housing element and plans and programs to meet local and regional housing needs.

The Public Facilities Plan must include a description of the character, location, timing, sequence, function, use and capacity of existing and future public facilities.<sup>15</sup> Specifically, the public facilities plan must include: (a) a transportation plan; (b) a sewer policy plan; and, (c) a parks and open space plan. The sewer policy plan must describe, designate, and schedule areas to be sewered.

The implementation program must include: (1) Official controls such as zoning, subdivision regulation and a schedule for adoption; (2) A Capital Improvement Program for transportation, sewers, parks and open space

facilities; and, (3) A Housing Implementation program which insures the local share of low and moderate income housing.<sup>16</sup>

The Metropolitan Council must review local Comprehensive Plans to (1) determine inter-governmental compatibility; (2) conformity with the Metropolitan System Plans; and, (3) consistency with other chapters of the Metropolitan Development Guide.<sup>17</sup> The Council, in its review, may require a local unit to modify its plan. If the local government fails to comply, the Council, after appeals have been exhausted by the local government, may initiate legal action to compel compliance.

The Act also requires local government to adopt official controls in a fashion set forth in the comprehensive plan. Local governments are further prohibited from adopting any controls or fiscal devices which are in conflict with the plan. Thus the Act requires that local controls be in conformance with the comprehensive plan.

The effect of this Act is to strengthen Brooklyn Park's growth management plan. The Metropolitan Council's Development Framework and other Systems plans target sewer extensions to Brooklyn Park in accordance with the City's phasing plan. The Act thus ties a local comprehensive plan to local controls backed up by a regional plan with substantial authority.

#### Green Acres

The Agricultural Property Tax Law, commonly called Green Acres law, was enacted in 1967 and revised in 1969.<sup>18</sup> The law permits eligible landowners to be taxed at a lower property tax rate and to defer special assessment levies.

Certain property owners with 10 or more acres and engaged in agriculture can apply. If the application is approved, the subject's real property will be valued and assessed for agricultural use only. In addition, any special assessments on the land will be deferred.

When the land is sold or otherwise disqualified, the owner must pay additional taxes amounting to the difference between taxes paid on agricultural value and the land's market value. The taxes are due for the three year period previous to disqualification. Special assessments become due 90 days after disqualification.

In 1979 landowners in Brooklyn Park had 3,183 acres enrolled in the Green Acres program (See Figure 8-5).<sup>19</sup> This total was down from 1978 when 3,358 acres were enrolled. The vast majority of the land enrolled is north of 85th Avenue and is spread throughout the five areas of phased development. Four small parcels of enrolled land are south of 85th Avenue.

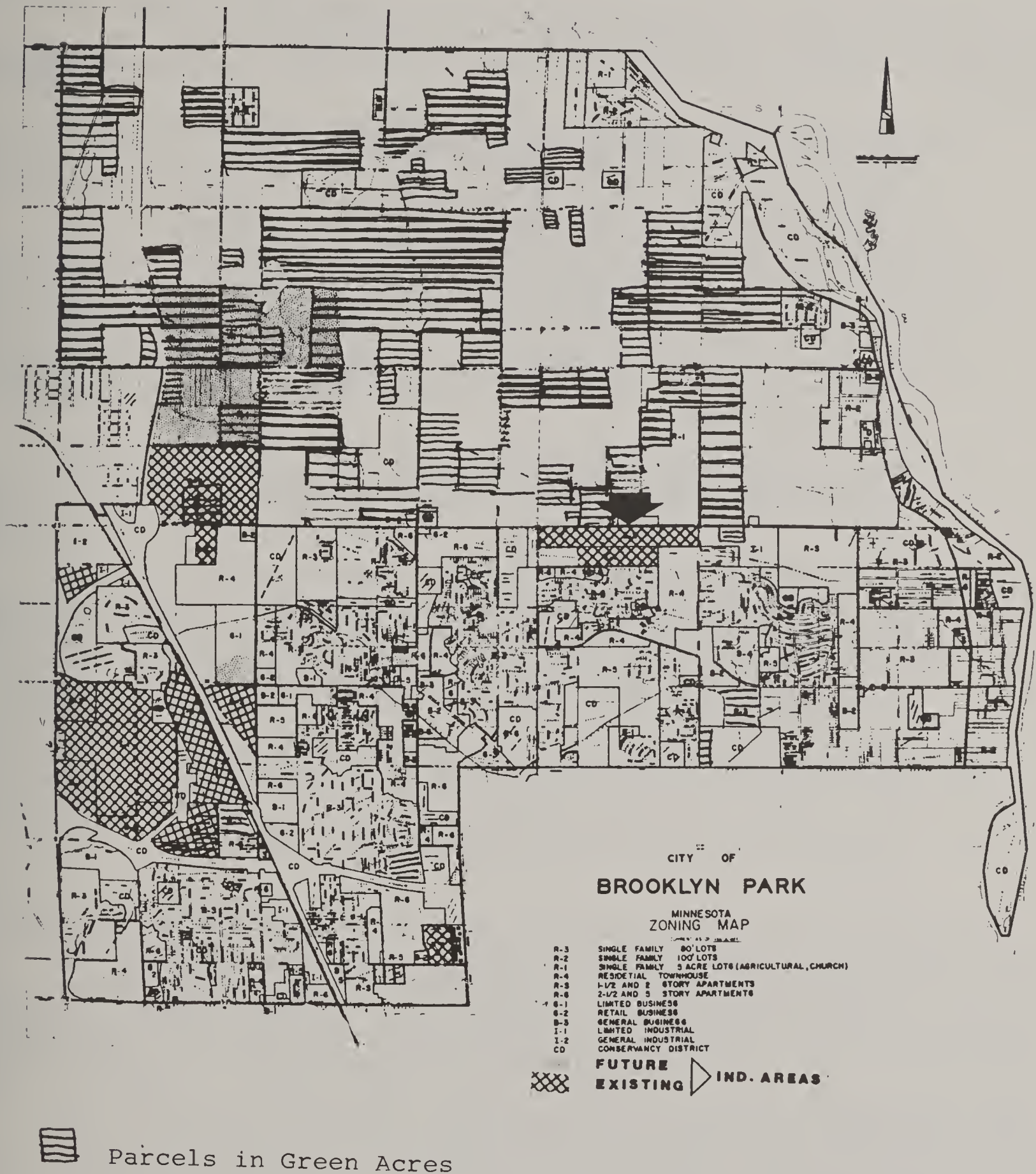
#### Comprehensive Plan

Brooklyn Park is currently engaged (May 1980) in preparation of their



Figure 8-5

SKETCH MAP: GREEN ACRES LANDS



Source: Adapted from Department of Community Development and Planning, City of Brooklyn Park, Minnesota, Lands in Green Acres Map, No Date.



second comprehensive plan. The plan, developed in response to the Metropolitan Land Use Planning Act (1976), represents a further refinement of the growth management concepts first developed in 1962 and subsequently included in the first comprehensive plan (August 23, 1971).<sup>20</sup>

As a first step in the preparation of the new comprehensive plan, the City Council adopted (January 23, 1978) a set of "Preliminary Goals and Policies." Several of these policies pertain to the City's growth management system:

- "1. Extension of utilities is the backbone of the City's controlled growth planning effort. Utilities in Brooklyn Park shall not be allowed to proceed or expand in an uncontrolled manner or piece-meal basis, instead it shall be the policy of the City of Brooklyn Park to extend utilities in such a manner as to provide for controlled community growth and planned development.
2. The city will establish timing and staging of development to assure orderly and functional urban growth to meet development needs.
3. Subdivision of land in excess of 5 acres for residential purposes, other than farmsteads, in designated urban reserve areas will be discouraged.
4. All land uses with urban density and character should be provided with public sanitary sewer, water and storm sewer systems. Such utilities should be installed as the land is developed for urban purposes at scale and timing commensurate with the financial capabilities of potential development.
5. The extension of utilities will be so designed as to direct growth in line with City policies.
6. No subdivision of land will be permitted without the availability of full utilities."<sup>21</sup>

In addition to the growth management policies, the new plan retains the City's commitment to a diverse housing market. A key goal is that "Residential land use densities will be interdispersed throughout the City to provide a residential balance for a well-rounded living environment."<sup>22</sup> To achieve the goal, the City will "Provide for a sufficient range of housing costs which will allow the less economically fortunate, the aged and the minorities an opportunity to contribute to the community."<sup>23</sup> Furthermore, "Different types of housing will be encouraged, including apartments, town-houses, and others, provided that each development is properly located..."<sup>24</sup> The Residential density categories will range from a low of 1-3 units to a high of 14-18 units/acre.

The City has also retained the phased areas of growth management (See Figure 8-6). The phasing reflects the rural north/urban south concept and also identifies the rough boundaries of the five areas north of 85th Avenue for phased development. Development north of 85th Avenue is expected to commence in the first area during the period 1984-1990 and in the last area after the year 2020.

### Zoning

The zoning ordinance provides for six residential districts, three business districts, one planned community development district, and one conservancy district.<sup>25</sup>

The residential districts include three single family districts, one mixed residential district, and two multi-family districts. Lot sizes in the single family districts range from 8,500 sq. ft. to 5 acres; in the two-family district, 16,200; and, in one multi-family district 3,400 sq. ft. of land area per dwelling unit while in the other multi-family district the minimum land area per 3 bedroom unit is 3,500 sq. ft. plus 500 more sq. ft. for each additional bedroom.

Of particular importance for the growth management phasing plan is the Residential District, R-1 Single Family. This district covers most of the land north of 85th Avenue -- that is, the land governed under the phasing plan (See Figure 8-7).

The purpose of (R-1) is to "provide a district which will allow very low density residential development and agricultural activity and to maintain an urban development reserve for some future time when urban services can be fully provided."<sup>26</sup> Permitted uses in this district include: (1) Single family detached dwellings; (2) Horticulture uses; (3) Farming; (4) Public Parks; and, (5) Public or parochial schools. Conditional uses include: (1) Livestock keeping when owned by other than the occupant of the site; (2) Cemeteries; (3) Churches; (4) Recreational Facilities; (5) Land reclamation and mining; and, (6) Municipal buildings and utility structures. The minimum lot area is 5 acres and minimum lot width is 300'.

### Subdivision Regulations

The subdivision regulations reinforce the growth management plan in requirements that developers provide adequate storm drainage to the site.<sup>27</sup> If the development cannot be hooked up to an existing system, this requirement sets an enormous financial burden on the subdivider since providing storm drainage is an expensive and complex proposition.

The subdivision regulations also require that sites be hooked up to water and sanitary systems where available. In addition, the City has set a policy to discourage the subdivision of property in areas not close enough to the existing municipal sewer system.<sup>28</sup> This policy is aimed at channeling new subdivisions into the urbanizing southern half of the City where the municipal

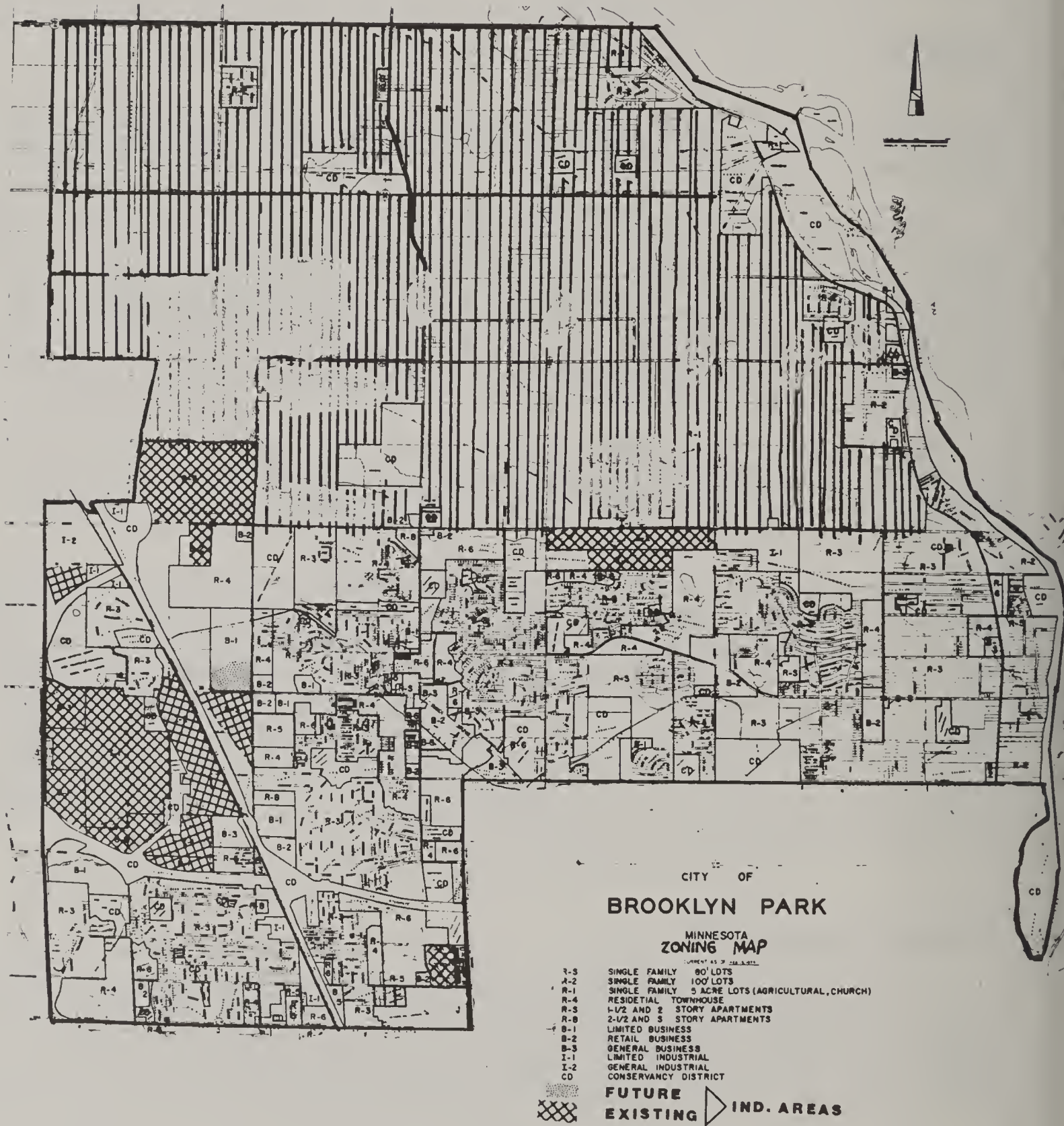


Figure 8-7

R-1 LANDS NORTH OF 85th AVE.



85th Ave.



Source: Adapted from City of Brooklyn Park, Minnesota Zoning Map, 23 March 1974.



sewer system is available, and, at the same time, keeping subdivision activity out of the northern half of the City where the sewer system is not available.

Until recently there was one important exception to subdivision regulations which bears on the ability of the City to protect the agricultural area north of 85th Avenue from residential development. The exception, provided for under state law, was commonly referred to as the "Metes and Bounds" exception.<sup>29</sup> Metes and Bounds are merely one method of legal description for a property. Metes (measures of length) and Bounds (measures of boundaries) are used when the property to be described is not on a duly recorded map or when the more conventional Township/Section/Range system is inappropriate because of the parcel's shape.

The "Metes and Bounds" exception provided that one parcel may be split or divided into two or more parcels so long as the resultant parcels are at least five acres and have a width of at least 300 feet. This five acre exception to the subdivision regulations set the upper limit on the minimum lot size for the R-1 District covering the area restricted for future growth. It meant, in effect, that landowners could sell off five acre parcels for residential use in spite of the clear policy of the City to avoid such development north of 85th Avenue.

#### Agricultural Preserve and Subdivision Act

This act, authored by State Representative William Schreiber of Brooklyn Park and enacted by the Legislature in April 1980, provides for the creation of agricultural preserves in the Metropolitan area and also provides an important amendment of the subdivision enabling authority -- specifically, the "Metes and Bounds" exception. Although the Act has yet to be applied in Brooklyn Park or anywhere else, it is expected to exert major influences on both agricultural lands and subdivision activity in the City and Metropolitan area.<sup>30</sup> (See Case Study Number 14)

The Agricultural Preserves section of the Act provides for creation of preserves at the instigation of the landowner subject to minimum size requirements and conformance to local plans and regulations. Generally, the agricultural parcel must be at least 40 acres; must be designated for long term agricultural use in local plans and regulations; and, must not have a residential density of more than 1 residential unit per 40 acres.

If the landowner meets the criteria, application for a preserve covenant may be made to the local government. The covenant restricts the land to agricultural use for a minimum of eight years. After the covenant is signed, the local government forwards copies of the agreement to relevant state, regional, and local agencies.

In return for the covenant, the landowner receives certain benefits and protections:

- (1) All land classified agricultural shall be valued solely with reference to its appropriate agricultural value;

- (2) Construction of sanitary sewer systems, public water systems or connections to these systems of land in the preserve is prohibited;
- (3) Local governments are prohibited from enacting any ordinance which would unreasonably restrict or regulate normal farm structures or practices; and,
- (4) Agricultural preserve land within a Township shall not be annexed to a municipality.

Under the Act it is extremely difficult for the landowner to cancel the covenant before the eight year period. The Act requires that in order to cancel a covenant the Governor must declare a public emergency. Local government, however, may cancel the contract at any time if the comprehensive plan and regulations are amended to indicate that the land is not longer scheduled for long term agricultural use.

One of the major questions concerning this Act was its relationship to the Green Acres Law. On the surface it appears that farmers get equal tax benefits under Green Acres while subject to fewer restrictions. But a key provision of the Agricultural Preserves Act is that it equalizes tax rates between the metropolitan area and non-metropolitan areas. Previously property tax rates were 20% to 25% higher in metropolitan areas. Under Green Acres, the tax rates are not equalized between metropolitan and non-metropolitan areas. Under the Agricultural Preserves Act, tax rates are equalized. The result for the landowner is a greater tax break under the Preserves Act. Thus while the Preserves Act carries heavier restrictions, it also provides a stronger financial incentive than the Green Acres Law.

The other half of the Agricultural Preserves Act deals with changes to the enabling authority for subdivision regulation. For Brooklyn Park the critical change concerns the previously mentioned Metes and Bounds Law. Before April 1980, parcel sizes of 5 or more acres with the 300' width were exempt from subdivision regulation, making the 5 acre minimum lot size in R-1 zone the largest feasible for Brooklyn Park. The change to this exemption now makes the exempt parcel be 20 or more acres with a width of at least 500'. This change is expected to have a major effect in the control of parcels north of 85th Avenue. It permits the City to increase the minimum lot size in the phased areas to 20 acres, a minimum which is expected to deter most of the land divisions.

#### IV. EFFECTIVENESS

Since 1962 Brooklyn Park has consistently followed its basic development strategy -- urban reserve north of 85th Avenue, controlled development south of 85th. The City has never adopted any policy in favor of long term agricultural land preservation. But the result of this interim policy is that agricultural land north of 85th has been maintained in agricultural use for nearly 20 years despite extreme growth pressure.



As currently structured, the phased development plan calls for large blocks of land to remain in agricultural use after the year 2020. Still, farming is officially designated as an interim use. But as one farmer pointed out, "In 1960 my neighbor told me that all of this land (north of 85th) would be covered with houses by 1965. Well, here it is 1980 and I have yet to see a single new subdivision cross the road."

The City's policy on re-zoning north of 85th parallels the development strategy. Re-zonings are practically unheard of. In the last three years, for example, the City had only one request for re-zoning and that was denied. Before that, there was one request for a mobile home park in 1970 (denied) and one in 1972 for a recreational complex (also denied).

The policy on re-zoning, as officially expressed in the Comprehensive Plan, is consistent throughout city hall and amongst the development industry. The policy is passed down from planning commission to planning commission, from city council to city council, from mayor to mayor, and city planner to city planner.

The City Attorney commented, "In my 16 years as City Attorney, most of the new councilmen and planning commissioners have been educated by their predecessors to understand there is a policy in force, and that policy is there will be no subdividing of property beyond the utility districts."<sup>31</sup> The Attorney, Curtis Pearson, also quoted from a memo that a former Mayor of Brooklyn Park sent to three newly elected councilmen: "Some developers who have been denied request for marginal public improvements, zoning, etc., will resubmit their case in hopes the new council will overlook the objections of the prior administration. ...To all this I say, stick to your guns and don't let them snowball you."<sup>32</sup>

The staff discourages re-zoning applications at every opportunity. If the applicant persists, the staff completes a fairly exhaustive review of the proposal. In the only one in the last 3 years, the City denied a request to change zoning from R-1 to Industrial. The findings pointed up that there was no mistake in the initial R-1 designation and that there had been no change in the area of the proposed re-zoning to warrant a change in the City's growth management strategy.<sup>33</sup>

While the policy on zoning has assisted the City in retaining its growth management strategy, the key controlling factor is the phasing of sanitary sewers and storm sewers. Because of the high water table and flooding, sanitary sewers and storm sewers are a must. Developers who have to pay for the extension of lines north of 85th Avenue cannot compete with developers who have sewered tracts south of 85th.

The City's policy is also supported by patterns of land ownership north of 85th and by the price of land north of 85th versus the price of land south of 85th. Somewhere between 30 and 50% of the land north of 85th is owned by one person, a non-farmer and resident of Brooklyn Park. Most of the remaining land is owned by other potential developers and by farmers. Much of this land is being held for future development by farmers and developers who



have worked previously with the City south of 85th Street. The farmer/landowners, some of whom formulated the 1962 strategy, are well aware of the City's policy and supportive of it. Thus a major source of potential development pressure is turned in favor of the City's policy.

Land values also support the policy. The price of a 5 acre lot north of 85th Street is roughly the same as the price of a residential lot south of 85th. But the lots south of 85th are fully serviced, while no services are available north of 85th and developers would incur the costs of providing services in lots north of 85th. Indeed, the Council has been extremely reluctant to provide for anything but the minimum level of service to any development north of 85th. As a result there is strong locational incentives in favor of development south of 85th.

The principal difficulty with the growth management strategy is seen in the Metes and Bounds Exception. This law permits lots of 5 or more acres to be parceled off without any review or control by the City. These lots are exempt from the subdivision regulation. Each year, for the past five years, an average of 6 parcels have been created in this way.<sup>34</sup>

The subdivision regulations have also been subverted by numerous "grandfather lots" which were also exempt from the regulations. Many of these lots remain undeveloped, but several are developed each year. This development also escapes subdivision review. Finally, by the time the initial strategy developed (1962), there were a series of commercial and industrial uses located on the north side of 85th Street. These uses remain.

Because of the exemptions and grandfather lots and uses, some areas north of 85th Street are zoned for higher density residential use as well as commercial and industrial uses. Other lands, mostly wetlands, are zoned for conservancy. The bulk of the residentially zoned lands (R-2) are along the Mississippi River (See Figure 8-8). Still, of the 8000 acres north of 85th, well over 7000 are zoned R-1 with the 5 acre minimum lot size.

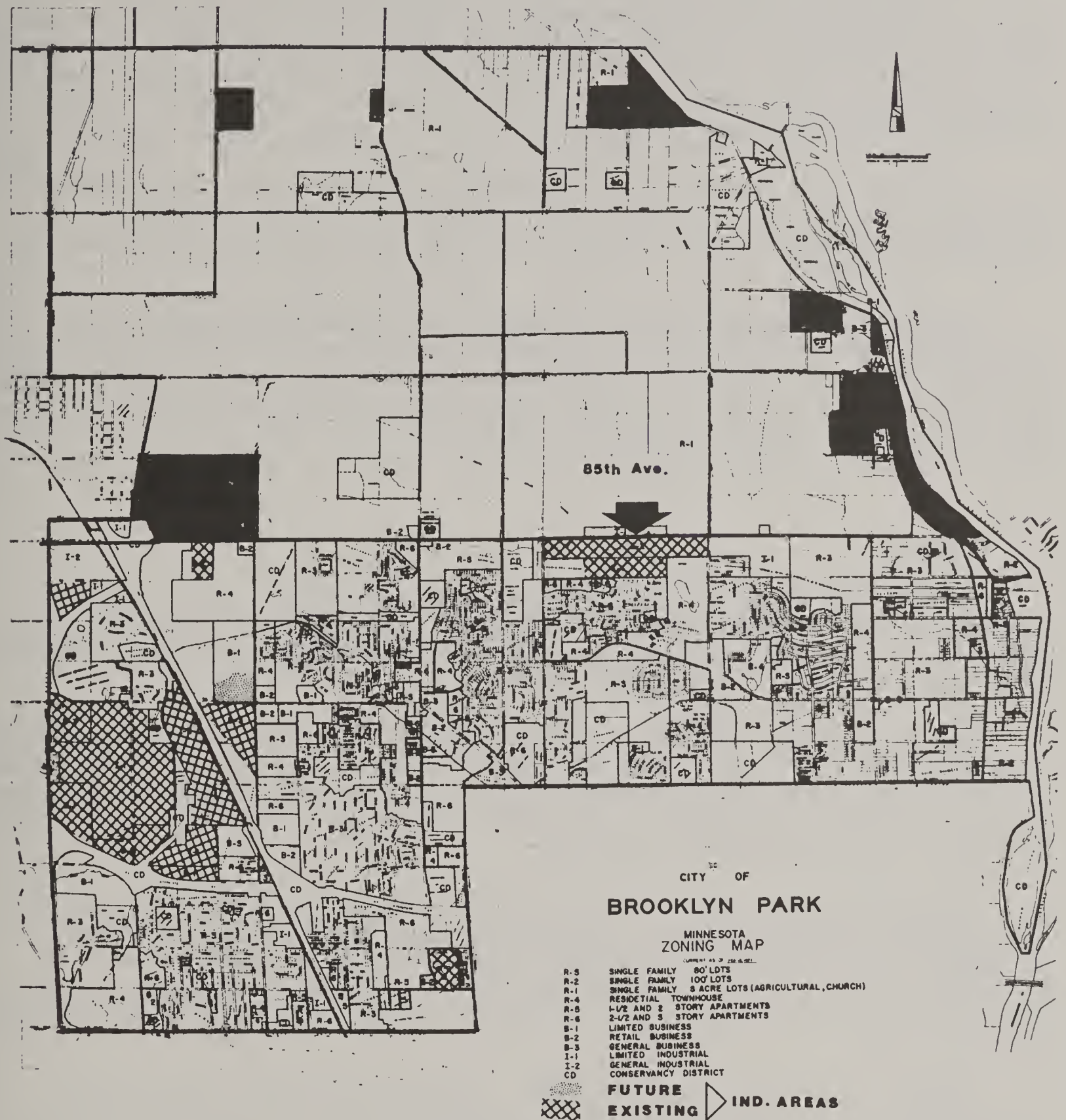
There are 634 residential dwelling units located north of 85th. Forty of these are farm residences.<sup>35</sup> 237 units are located in the R-1 zones and 397 are in R-2 or other zones.

Aside from the subversion of the City's development strategy, these units have posed continuing difficulty for the City. In one subdivision, for example, houses were built on a wetland which, after a long dry spell, was void of water. One year after the homes were built, there were heavy rains. As a result, the wetland was a wetland again; and basements flooded, sewage backed up, foundations settled.

In another case, a couple of land locked five acre lots were parceled off and eventually built upon. The owner has built a new dirt road for access. Unfortunately, the parcels are located in the middle of a proposed diamond interchange for a new freeway. This happened because the land division was exempt from subdivision regulation and local officials had no control over

Figure 8-8

LANDS NORTH OF 85th AVE. ZONED FOR NON-FARM OR NON-CONSERVATION USE



Source: Adapted from City of Brooklyn Park, Minnesota  
Zoning Map, 23 March 1974.



the residential use of the land aside from the minimum zoning standards.

The service problem becomes acute in subdivisions of record as the lots become developed. Initially, residents can deal with dirt roads since they are lightly traveled. Drainage too isn't much of a problem since the demands placed on the natural system are not overwhelming. But as more and more lots are built upon, the service problem typically becomes unmanageable, and residents seek assistance from the City.

Although these premature developments have been a continuing source of irritation for the City, they have not compromised the basic growth management strategy. Agriculture continues north of 85th much the same as it has since 1962.

Proposed 1980 amendments to the subdivision enabling authority are expected to help the City control premature parcelization. Officials, including the mayor, members of the planning commission, and planning staff, are agreed that the City will pass a new zoning classification north of 85th requiring a 20 acre minimum lot size. This lot size under the new law will become the size required for exemption of the subdivision regulation.

#### V. PERCEPTIONS

The support given the City's growth management plan is solid and consistent. The support comes from the city council, mayor, planning commission, planning department, public works department, developers, bankers, real estate companies, and farmers.

The development industry in Brooklyn Park enjoys an excellent relationship with City Hall. So long as the development industry follows the basic growth management plan, the City goes out of its way to help developers in locating parcels and developing them. In the main, the City favors working with large developers who are active in the City.

Developers have a good understanding of the growth management plan and also express confidence in it. As one developer mentioned, "The Growth Management Plan allows us to produce better products at lower prices. We can work with large blocks of land and we have a clear understanding of what is and what is not allowed. We've got a good solid working relationship with the City."

Farmers also support the strategy. Indeed, the farmer were mainly responsible for the 1962 decisions, and many of them continue to be active in planning issues. The growth management plan, in the farmer's view, has permitted them to continue farming with few of the urban/rural conflicts that characterize other jurisdictions. Farmers see the program as saving them money through reduced property taxes and making farming both profitable and possible. One of the spin-offs of the pattern of land ownerships is that many farmers have rented land from non-farming owners at a price which is less than annual taxes on the land.



Some observers noted that development opportunities in the southern half of the City were disappearing. (The City estimates that at least 1800 acres remain but not in large blocks.) Very few large blocks of land are available. As a result, some developers have shifted their operations to surrounding communities. The remaining developers are anxious for the City to begin planning work in preparation for the opening of the first phased area north of 85th. The City, in turn, is doing just that in their work on the comprehensive plan. As time passes, this pressure can be expected to grow. The first phase is now scheduled for the period 1980 to 1983 with the second scheduled for 1984-1990.

One of the most striking characteristics of decision-making in Brooklyn Park was the small town atmosphere that surrounds it. There are, for example, only a few prominent developers. There are only a few farmers. There are only a few large landowners. Most are on a first name basis. Most know the Mayor, some councilmen, and at least one planning commissioner or staff planner. All understand the growth management plan, believe it has worked for their interests, and support it.

FOOTNOTES

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3. Ibid.
4. Ibid.
5. Ibid.
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7. Vignola, Raymond, "Brooklyn Park: A Study of Coping With Growth," Unpublished Paper. The author was an assistant city planner for Brooklyn Park.
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9. Minn. Statutes, Section 273.11.
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13. Minn. Statutes, Chapter 473.854.
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19. Data provided by Brooklyn Park City Planner, Gary Berg.
20. City of Brooklyn Park, Department of Community Development, Comprehensive Plan, Brooklyn Park, Minnesota, (1971).

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22. City of Brooklyn Park, *supra* note 2, 1-10.
23. *Ibid.*
24. *Ibid.*
25. City of Brooklyn Park, Minnesota, Zoning Ordinance, Brooklyn Park, Minnesota, adopted March 24, 1974, as amended August 1, 1979.
26. *Ibid*, Page 5.
27. City of Brooklyn Park, Minnesota, Subdivision Regulations, Brooklyn Park, Minnesota.
28. City of Brooklyn Park, *supra* note 22.
29. Minn. Statutes, 1978, Section 462.358, since repealed.
30. Minn. Statutes, Section 462.351, 462.352.
31. Pearson, Curtis, "Growth Management: The Brooklyn Park Experience," Managing Local Growth in the Metro Area, Metropolitan Council, St. Paul, Minnesota, 1978, Page 118.
32. *Ibid*, 119.
33. Brooklyn Park Planning Commission, Minutes, April 2, 1980.
34. Berg, Gary M., "How is Growth Management Working North of 85th Avenue?", Memo to Planning Commission and City Council, January 16, 1979.
35. *Ibid.*





LARGE LOT AGRICULTURAL ZONING IN  
WALWORTH COUNTY, WISCONSIN

by

William Toner

I. INTRODUCTION

Walworth County, covering 356,480 acres, is located in southeastern Wisconsin (see Figure 9-1). It is 45 miles southwest of Milwaukee, Wisconsin; 60 miles northeast of Rockford, Illinois; and 90 miles northwest of Chicago, Illinois (see Figure 9-2). Walworth's topography was formed by glacial activity resulting in a series of moraines -- ground, terminal, and kettle.<sup>1</sup> The glaciers also produced outwash terraces, level areas formed by water flowing out from the front of the glacier. The County has 37 lakes, 220,209 acres of prime agricultural land (61.77% of the total land area), many areas with steep, wooded slopes, four cities, seven villages, and a decidedly rural setting.

Since 1850, Walworth has had steady population growth except for 1910 to 1920 when there was a slight decline.<sup>2</sup> In 1850 the census recorded 17,862 people, and by 1978, the estimate was 60,489.<sup>3</sup> Since 1950, Walworth has averaged a population increase of roughly 10,000 people per decade, going from 41,584 in 1950 to 52,368 in 1960 and 63,444 in 1970.<sup>4</sup> The most recent population forecast puts the year 2000 population at 99,600.<sup>5</sup>

A key factor in the development of Walworth County has been its proximity to Milwaukee, Rockford, and Chicago. Milwaukee, Rockford, and Chicago serve as employment centers for many Walworth residents; thus, the economic expansion of these centers leads to increased population growth in Walworth.<sup>6</sup> In the summer months, however, Walworth, because of its distinctive landscape, serves as a tourism-recreation center for many people from the same metropolitan areas. As Walworth is well within one and one-half hours of driving time of over 9 million people, the summertime population jumps to over 300,000.<sup>7</sup>

The County economy is anchored in manufacturing, agriculture, and tourism. Although manufacturing employment has declined as a percentage of the County's total employment, the 1975 figures show that 36.46 percent of total employment was in manufacturing (down from 47.50 percent in 1964).<sup>8</sup> Yet, between 1964 and 1975, the number of manufacturing employees actually increased from 5,284 to 5,630.<sup>9</sup> Manufacturing employment is dominated by primary metals, electrical and electronic equipment, food and kindred products, iron and steel foundries, fabricated metal products,





LARGE LOT AGRICULTURAL ZONING IN  
WALWORTH COUNTY, WISCONSIN

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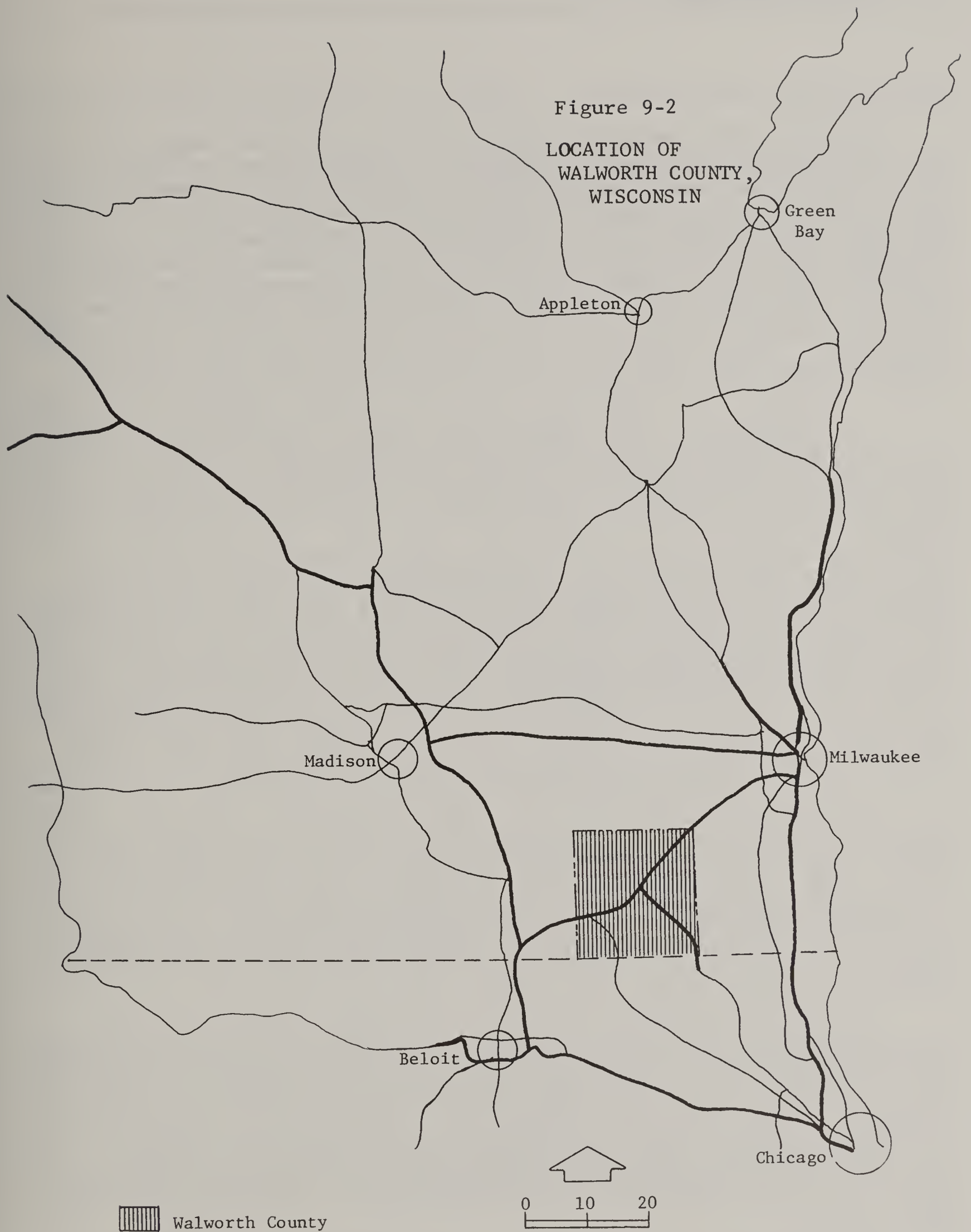
Figure 9-1  
WALWORTH COUNTY, WISCONSIN



Source: Rich, Stuart M. et al., Overall Economic Development Plan Walworth County, Wisconsin, Overall Economic Development Committee, Elkhorn, Wisconsin, 1977, Page 10b.

Figure 9-2

LOCATION OF  
WALWORTH COUNTY,  
WISCONSIN





and printing and publishing.

Tourism ranks second to manufacturing in total employment.<sup>10</sup> In 1975, tourism accounted for 21.23 percent of the total employees, and, based on gross receipts, the industry ranked seventh in the state for 1976 with receipts totaling 64.3 million dollars.<sup>11</sup> The importance of the Milwaukee, Rockford, and Chicago metropolitan areas to Walworth tourist industry was shown in one study of the Lake Geneva (Walworth County) area where 69.8 percent of the visitors came from the 20 county market area in and around Illinois (Chicago and Rockford), and 12.2 percent came from counties in and around Milwaukee.<sup>12</sup> Only 5.8 percent came from the national market.<sup>13</sup>

Farm employment, in contrast to tourism and manufacturing, accounts for only .08 percent of total employment (1978).<sup>14</sup> This makes farm employment in Walworth lower by .01 percent than the state average of .09 percent.<sup>15</sup> But agriculture plays a key role in the County and, in 1978, there were an estimated 1,152 farms covering some 258,369 acres.<sup>16</sup> The market value of agricultural products sold amounted to an estimated 64,738,000, up sharply from the 1974 total of 47,763,000.<sup>17</sup> Over half (53%) of the total county area is harvested cropland, but the market value of agricultural products sold is split between cash crops and livestock, 39% and 58% respectively.<sup>18</sup> Total farm income in 1978 was 24,922,000.<sup>19</sup> Principal crops include corn for grain, seed and silage, wheat, oats, soybeans, hay, and vegetables for sale. Animals include beef cows, milk cows, heifers and heifer calves, and hogs and pigs.<sup>20</sup>

The quality of the County's land resource is strongly related to both tourism and agriculture. The farms give the County much of its rural flavor and add to the attractiveness of its distinct landscape which, in turn, makes the County a tourist attraction for the nearby urban population. But the pressure on their land resources, from population and economic growth, is substantial and requires that the County maintain a careful balance between development and its landscape.

The citizens of Walworth have seen what population and economic pressure can do. In nearby counties in both Illinois and Wisconsin, hills have been flattened by bulldozers, giant billboards lace what were once scenic country roads, subdivisions have been built in floodplains and leapfrog through prime agricultural land, and wooded areas have been scraped from the earth. Such pressures would harm and perhaps destroy Walworth's land resource and, along with it, tourism and agriculture.

But the pressure of population and economic growth on Walworth's landscape, as well as the effects of the pressure on surrounding counties, did not suddenly surface. The pressure was slow in developing, and the evidence slow in mounting. Walworth County's response was equally measured.

## II. EVOLUTION OF WALWORTH'S PROGRAM

Most observers trace the County's agricultural preservation efforts back to 1967. But forty years before, in 1937, Walworth County first considered adopting a county-wide ordinance. By 1946, the County had adopted a zoning ordinance and 15 of 16 townships had endorsed it. This endorsement was necessary to give the zoning ordinance county-wide application (save for incorporated cities and one township). By 1965, the County had gone through two major revisions of its zoning ordinance.

In 1965 the Southeastern Wisconsin Regional Planning Commission (SEWRPC) passed its first regional land use and transportation plan.<sup>21</sup> When the regional plan was passed, Walworth County was without a plan of its own. Instead, Walworth County, in March 1967, adopted the regional plan as its own and set out, for the third time, to revise the County ordinance.

The revision of the ordinance was to focus on the four principal goals of the regional plan: (1) to preserve prime agricultural lands; (2) to concentrate urban growth in and near established population centers; (3) to preserve environmental corridors; and (4) to provide for balanced economic growth--recreational, industrial, and agricultural--while protecting the quality of the resource base.

The 1967 SEWRPC plan was an extraordinary document. It centered on protection of prime agricultural lands, environmental corridors, balanced growth, and contained growth, roughly five years before these concepts were even to reach the issue stage in other areas of the country. Yet SEWRPC was able to formulate these ideas into a land use and transportation plan which was adopted by its own commission and subsequently adopted by the Walworth County Board. This plan was technically excellent and far in front of the 1967 state of the art.

That the regional plan was so well received and finally adopted in Walworth County also demonstrates that Walworth County was fairly comfortable with the basic idea of planning. Walworth's long zoning history also shows that its citizens accepted the notion of public regulation of private land. This gave the County the head start it needed to become one of the first counties in the nation with a regulatory program specifically directed toward the preservation of prime agricultural land.

But in 1967 the adoption of the revised zoning ordinance was still seven years off. Work had barely begun on the revision when the County planners were interrupted by more immediate



regulatory needs--a county-wide sanitary ordinance, subdivision regulations, and a shoreland/floodplain ordinance.

The county-wide sanitary ordinance, passed in 1967, set up regulations governing the placement of septic tanks. Heretofore, the County had been plagued by various septic tank failures that had polluted potable water supplies in some areas and had polluted the water of various sensitive resources such as lakes and wetlands. The ordinance required that various soil tests be performed to determine the proper location of such sanitary systems. It set restrictions on septic tanks in water-saturated soils, areas with minimal depth to bedrock, steep slope areas, and established setbacks for septic systems from wells and other sensitive lands such as wetlands, floodplains, and lakes.

The subdivision regulation was mandated by the State. In Walworth County the need was clear. Rural subdivisions, especially those going in around the County's 37 lakes, showed a host of shortcomings. Sewage problems from septic tanks, inadequate roads, undersized lots, fire protection problems, and other design failures pointed up the need. Thus the work on the zoning revision was halted as the County developed and adopted subdivision regulation in 1971.

As if the subdivision work was not enough, the County also embarked on new regulatory work with floodplains and shorelands. Again at the urging of the State, the County developed and adopted special regulations governing both shorelands and floodplains. These ordinances were also adopted in 1971, making that year a high-water mark in the adoption of regulations specifically dealing with the protection of the environment.

Three years had passed since the County initiated the revision of the zoning ordinance which was to be based on the regional land use and transportation plan. During this period the issue of agricultural land protection began to take shape. Yet in the beginning there was little concern for or consensus on the issue of agricultural land protection. Instead, the attention of officials and residents, especially farmers, began to focus on day to day conflicts between farmers and new suburban residents in agricultural areas.

"The first thing you noticed," said Roy Lightfield, a farmer and former Township Supervisor and Planning Commission member, "was the great increase in traffic. We had our first incident of a child hit by a car, and we had no traffic control or policing that you have in cities." There were also growing problems with vandalism. "The kids think it's wide open spaces in the farmer's field--crop damage, trash left in fields, dogs harassing cattle," continued Lightfield. "We've had some



severe dog problems where they've gotten into cattle, and got into some registered cattle; in one case with damage claims as high as \$800.00. Other times they just harass the cattle, driving them into fences, and the farmer takes a loss on the cattle and the fence. It's always that nice German shepherd that's very good around children, but when he gets out into the country, he turns into a vicious menace."

Other officials were exposed to similiar problems outside of Walworth County. Gene Hollister, generally considered the first County Board Member to latch onto the agricultural protection issue, found that he "could see the problems they were having in Milwaukee County, Waukesha County, and Washington County, Wisconsin. These counties just couldn't handle the growth. I was also exposed to problems in the east and the west, in Baltimore County, Maryland, and Sacramento County, California, and then I came back to Walworth and took a good long look at what our problems were going to be if we didn't do something about it."

Roy Lightfield recalls the lessons of the state to the south, Illinois, "We saw an example of poor planning down in Illinois, around Chain of Lakes and Fox Lake. Fox Lake grew like topsy and it showed. We always used to say, 'Do you want to be another Fox Lake?'" Other Walworth farmers were refugees from Illinois and other states where agriculture had been driven out by rural suburban development. The refugees were quick to point out the similarities, the growing similarities between Walworth County and the places they had left to come to Walworth County.

Still other conflicts were brewing in Walworth's Townships. New suburban residents, while satisfied with the rural atmosphere, began to complain to the Township Board about snow removal, police, fire, and other services common to urban areas. Other new residents were upset by farming practices, nighttime operations, and feedlots. These events unsettled Township Boards who for years had not known any significant conflicts within their jurisdiction. Elected officials, in many cases, were also upset at the shifts in voter registration which, for the first time, threatened farmer control over rural township government.

As a result of these concerns, County planning staff began to focus on agricultural land protection. They began to find, for example, that between 1971 and 1973, over 70% of new rural subdivisions had been going in on Class I, II, and III soils. Further, the zoning ordinance, at that time, set a minimum lot size in the agricultural area of only one acre, so few subdivisions were deterred.

As staff and officials honed in on the relationship between premature rural subdivision and suburban-agricultural conflicts, a consensus began to take shape. Although the planning work remained in the discussion stage, elected officials, planning commissioners, staff, and advisory groups, particularly the Farm Council, began emphasizing the protection of prime agricultural land.

The role of the Farm Council is instructive. The Council was composed of members of the agricultural community--farmers, farm organization members, agricultural bankers and businessmen, extension agents, soil and water conservation district members, vocational agriculture instructors, and others. Formed in the early stages of the work on zoning ordinance revision, the function of the Farm Council was to represent the agricultural interests. Toward this end, the Council played a key role in identifying the issue of agricultural land protection and, subsequently, in establishing ordinance standards and explaining the zoning approach to the general public.

Just as important, there were several nonfarm groups and organizations that began to coalesce around the zoning ordinance revision. These included: the Audubon Society, property owners groups, the Walworth County Central Planning Council, Environmental Action Committee, and Garden Clubs.

It is important to note that support from farm and nonfarm groups covered all four goal areas of the regional plan--protection of agricultural lands; protection of environmental corridors; balanced economic growth; and, concentration of population in established population centers. As a result, the political support for the ordinance was based on a series of concerns, and while agricultural land protection was central, it was not the only matter of concern.

As the staff began work on a first draft of the ordinance revision, the first public meetings were held. These meetings, which by 1974 would number over 500, were the principal vehicle through which county officials and interest groups explained the ordinance to the public and solicited public commentary, suggestions, and support.

At first, informational meetings were held in each of the 16 Townships. There, citizens and Township officials were invited to identify problems and issues pertaining to the zoning ordinance revision and to discuss a series of township-based resource maps. These resource maps, identifying such things as soil quality and sensitive lands, proved central to the success of the Township meetings. They provided a factual basis for discussion, assisted in keeping the discussion on target, and gave the attendees a common set of easily understood resource



data. County officials took notes, insuring their understanding of the comments and suggestions, and, later, prepared a first draft of the revised zoning ordinance. This draft was based upon the precepts of the regional plan, but it also reflected many of the concerns expressed by residents at the Township meeting. Once complete, County staff returned to each Township for a second round of discussion.

At the second series of meetings, county officials explained the proposed zoning revision, highlighting basic concepts and approaches responding to township needs. Once again, discussion was opened to register public comments and criticisms of the proposal. When the meeting was finished, county staff again returned to their offices and began a further refinement of their proposal based upon the township critique.

This approach was taken in each of the County's sixteen townships. As a result, county officials and staff had an excellent understanding of local issues and concerns and were able to integrate these concerns into a revised zoning ordinance. Further, Township officials and citizens could see that the County had made changes to their ordinance--both text and map--based upon the detailed, knowledgeable critique of Township people. This increased the support for the revised ordinance which, while based on the precepts of regional plan, conformed to the needs of Walworth residents. Thus, before the ordinance ever went to the County Board for public hearings, considerable support had been obtained from various county-wide organizations and interests as well as from individual townships.

By 1974 the revised ordinance was in final draft form. The proposal, with minor alterations, was adopted by the County Board in August of that year. Over the next 18 months, fifteen of the sixteen Townships adopted the same ordinance, while the sixteenth adopted one based on the County ordinance.



## III. FACTORS IN ADOPTION OF THE ORDINANCE

There were several factors at work to explain the successful evolution of this program. But of all the factors, say the principals, none was more important than the extraordinary attempt at public participation and public education in the zoning revision process. "We had meetings after meetings," said Gene Hollister, "and that was the only way we felt we could get the job done."

Still another factor was the broad base of support enjoyed by the County in revising of the ordinance. The work of the Farm Council and other groups such as the National Beauty Council, the County Audubon Society, Environmental Action Committee, Garden Clubs, and property owner associations resulted in a strong grass roots support for the ordinance. As the meetings were carried forward, the support continued to mushroom leading to a near county-wide consensus by the time the ordinance went before the County Board.

The County also enjoyed excellent relations with the local press. Staff were careful to insure that the press and other media were notified well in advance of all meetings and that they were provided with all relevant information. The staff, members of the advisory groups, and elected officials made themselves available for interviews and were quick to provide any other help requested. As a result, media coverage of the ordinance revision was extensive, providing yet another mechanism to carry the ordinance work to the public.

The County effort was also buttressed by the support of a key politician, Gene Hollister, Chairman of the County Board and also Chairman of the County's Park and Planning Commission--the chief planning committee of the County. Hollister was particularly interested in farmland protection, and had turned to this issue as a result emphasis given it by the SEWRPC plan and by his exposure to issues of farmland preservation in meetings of the National Association of Counties and other forums. In this support, Hollister was joined by another important County Board member, Franklin Walsh, who chaired the all-important agricultural committee. Thus, farmland protection had the advocacy of two key board members who also chaired the two committees that were central to any farmland protection effort.

Once the revision process was underway, particularly after the first Township meetings were held, other county officials, who happened to be farmers, began to note the suburban/agricultural conflicts within the county. These on-site conflicts were important in the early stages of public education. "You have to educate people," said Roy Lightfield, "and that takes time, years in fact to reach everyone. But

then some people have to experience the problem before realizing that something needs to be done. I can talk all day long, but if you can see it and feel it, you say, my God, I've got to do something, there must be some controls."

There was also the point that citizens had a strong say in the nature of the zoning ordinance revision. County officials went to great lengths to insure a level of participation which would mean that the ordinance, once prepared, would reflect the interests of the citizens. The ordinance was a locally derived and inspired document.

In addition, the members of the county staff were long time residents of Walworth County. At least one was a practicing farmer and two others had successful Christmas tree plantations. The staff, as a result, was keenly aware of the culture and interests of their clients--the citizens of Walworth.

At the technical level, the work of the staff was anchored in an excellent data base. The zoning revision, based primarily upon a soil survey as adjusted by other planning factors, proved superior. There was little question that the staff work had a solid technical base in the soils data. These data were especially meaningful to farmers who themselves use it.

Finally, one must consider the long history of zoning in Walworth County coupled to the length of time given to the zoning ordinance revision. Had staff and officials completed the revision in a year or less, there would have been too little time to generate the level of public support needed to pass the ordinance. By taking the necessary time and by insuring a high level of public participation, the County was able to generate the critical level of public support necessary for passage.



#### IV. PROGRAM DESCRIPTION

Walworth's program is composed of one regional land use and transportation plan, four ordinances, and one state program. The 1966 SEWRPC regional land use and transportation plan, as adopted by Walworth in 1967, serves as the basic planning document. In May 1978, SEWRPC published a revision of the 1966 plan, but the recent work, A Regional Land Use Plan and A Regional Transportation Plan For Southeastern Wisconsin--2000, retains the earlier emphasis given the four goals. For agricultural land, the new plan sets the multiple objective of preserving "...land areas for agricultural uses to provide for certain special types of agriculture, provide a reserve or holding zone for future needs, and ensure the preservation of those areas which provide wildlife habitat and which are essential to shape and order urban development."<sup>22</sup>

There are four ordinances that implement the plan. The Sanitation ordinance of 1967, the first such ordinance adopted in the state, regulates the location of on-site waste-disposal systems and does so principally through the soil survey. The shoreland-floodplain ordinance applies special controls to all lands within 1000' of lakes and navigable streams. The subdivision ordinance is used to evaluate the location and character of new subdivisions as well as to control the design of new subdivisions. The comprehensive zoning ordinance of 1974, to be described in detail later, is the key regulatory vehicle for farmland protection.

In December 1977, Wisconsin's Farmland Preservation Program went into effect. This program, (see Case Study No. 17), provides annual tax credits to farmland owners who contract with the state not to develop their land. But after 1982, landowners can only receive tax credits if their counties first adopt agricultural preservation plans or exclusive agricultural zoning or both, and then only if the plans or agricultural zones are approved by the state. Walworth County has already prepared the agricultural preservation plan and their 1974 ordinance, after minor revision, met state standards.<sup>23</sup> The plan and regulation have also been adopted by Walworth's Townships and approved by the state. Thus Walworth's farmland owners are eligible for credits.

The Farmland Preservation Program strengthened the County's existing commitment to farmland protection by providing additional incentives to farmland owners to see that their land stayed in agricultural use. The state program had the result of encouraging farmland owners to get their farmland into the most restrictive (A-1) agricultural zone. For example, one year after the state program went into effect, 66,752 acres of the eligible A-1 lands were certified for the state program. This amounted to 43% of Walworth's eligible land.



The Comprehensive Zoning Ordinance of August 1974 establishes five agricultural districts: (1) A-1 Prime Agricultural Land District; (2) A-2 Agricultural Land District; (3) A-3 Agricultural Land Holding District; (4) A-4 Agricultural-Related Manufacturing, Warehousing, and Marketing District; and, (5) A-5 Agricultural-Rural Residential District.<sup>24</sup>

A-1: Covering approximately 201,500 acres

The purpose of the A-1, Prime Agricultural Land District, is to "Maintain, preserve, and enhance agricultural lands historically exhibiting high crop yields. Such lands are generally covered by Class I, II, and III soils...it is hereby determined that the highest and best use of these land is agriculture."<sup>25</sup>

The permitted uses are beekeeping, dairying, floriculture, grazing, livestock raising (commercial feedlots are a conditional use), orchards, paddocks, plant nurseries, poultry raising (commercial egg production is a conditional use), cash crops, raising of tree fruits, nuts and berries, sod farming, vegetable raising, viticulture, equestrian trails, forest and game management, greenhouses, nature trails, stables, and two single family dwellings or one two-family farm dwelling. The dwellings must be for resident owners or for children of resident owners or farm laborers. Both children and farm laborers must be substantially engaged in one of the permitted uses or an approved conditional use.

Conditional uses include housing for seasonal workers, commercial feedlots, livestock sales facilities, veterinary services, commercial fur farms, commercial egg production, mobile homes for farm laborers, land restoration, business directory signs, sewage disposal plants, airports and related facilities, government and cultural uses and schools and churches.

The criteria used to evaluate the conditional uses are general and do not include detailed agricultural considerations. The ordinance establishes that the County's Park and Planning Commission may authorize the zoning administrator to issue a conditional use permit provided that the conditional use is "...in accordance with the purpose and intent of this Ordinance and are found to be not hazardous, harmful, offensive, or otherwise adverse to the environmental quality, water quality, shoreland cover, or property values in the County and its communities."<sup>25</sup>

The minimum lot size required in the A-1 District is 35 acres for a permitted or approved conditional use. However, farm homes extant at the time of ordinance adoption may be separated from the farm lot provided that sewage disposal requirements are met and that the lot area of the farmstead is at least 40,000 square feet.

As of November 1979, 201,500 acres were contained in the A-1 District. This represents 54 percent of the County's land area. Since then, however, the total land in this district has been increased as a result of the state's farmland program.

A-2: Covering approximately 38,000 acres

The purpose of the Agricultural Land District is to "...maintain, preserve, and enhance agricultural lands historically utilized for crop production but which are not within the A-1 Prime Agricultural Land District and which are generally best suited for smaller farm units, including truck farming, horse farming, hobby farming, orchards, and other similiar agricultural-related farming activity."<sup>26</sup>

Permitted uses are the same as those in the A-1 District except that only one single family farm dwelling is allowed. This is because of the comparatively small 5 acre minimum lot size in the A-2 District. The conditional uses are the same as those in A-1 except that A-2 conditionally permits ski hills, hunting and fishing clubs, recreation camps, and public or private campgrounds. The district also includes the farm consolidation provisions contained in the A-1.

While this case study was in progress, this District came under increasing scrutiny by County officials. Later, officials changed the minimum lot size requirement for the district, increasing it from 5 to 20 acres. The reasons for this change will be discussed in later sections.

A-3: Covering approximately 3,000 acres

The Agricultural Land Holding District contains lands set aside for future urban expansion. These lands are located next to municipalities and have been designated for future urban use by the regional land use plan or plans of municipalities. Development is to be deterred on these lands until legislative bodies determine that it is feasible to provide public facilities and services to the area. The lands, according to the ordinance, should be reviewed at least once every five years to determine whether all or part of the lands ought to be transferred to urban use districts.

The list of permitted and conditional uses for this district is essentially the same as those in the A-1 District. So too is the requirement governing farm consolidation, but because lands in this district have been primarily used for agriculture, and because development is to be deterred in the district until lands are needed for urban use, the minimum lot size is 35 acres.



A-4: Covering approximately 1,000 acres.

The purpose of the Agricultural Related Manufacturing, Warehousing, and Marketing District is to provide the "proper location and regulation of manufacturing, warehousing, storage, and related industrial and marketing activities that are dependent upon or closely allied to the agricultural industry." <sup>27</sup> This is a floating district used to regulate the expansion of existing industries and the location of new industries.

All uses within this district are conditional uses and must be approved on a case by case basis according to the general criteria outlined for the conditional uses in the A-1 District. (The minimum lot size is also set on a case by case basis.) Conditional uses include:

1. Contract sorting, grading and packaging services.
2. Corn shelling, hay baling, and threshing services.
3. Bottling of spring water.
4. Grist mill services.
5. Horticultural services.
6. Poultry hatchery services.
7. Production of animal and marine fat and oils.
8. Canning of fruits, vegetables, preserves, jams, and jellies.
9. Canning of specialty foods.
10. Preparation of cereals.
11. Production of natural and processed cheese.
12. Production of chocolate and cocoa.
13. Coffee roasting and production of coffee products.
14. Production of condensed and evaporated milk.
15. Wet milling of corn.
16. Cottonseed oil milling.
17. Production of creamery butter.
18. Drying and dehydrating fruits and vegetables.
19. Preparation of feeds for animals and fowl.
20. Production of flour and other grain mill products.
21. Blending and preparing of flour.
22. Fluid milk processing.
23. Production of frozen fruits, fruit juices, vegetables and other specialties.
24. Malt production.
25. Meat packing.
26. Fruit and vegetable pickling, vegetable sauces and seasoning, and salad dressing preparation.
27. Poultry and small game dressing and packing providing that all operations be conducted within an enclosed building.
28. Milling of rice.
29. Production of sausages and other meat products providing that all operations be conducted within an enclosed building.
30. Production of shortening, table oils, margarine, and other edible fats and oils.
31. Milling of soybean oil.
32. Milling of vegetable oil.
33. Sugar processing and production.
34. Production of wine, brandy, and brandy spirits.
35. Livestock sales facilities.
36. Grain elevators and bulk storage of feed grains.



- |  |  |
|--|--|
| 37. Fertilizer production, sales, storage, mixing, and blending.                         | 43. Veterinarian Services.   |
| 38. Sales or maintenance of farm implements and related equipment.                       | 44. Land restoration.  |
| 39. Transportation-related activities primarily serving the basic agricultural industry. | 45. Business Directory Signs (exceeding 2).  |
| 40. Living quarters for watchman or caretaker.   | 46. Sewage Disposal Plants.  |
| 41. Recreational Vehicle and Boat Storage.   | 47. Airports, Airstrips and Landing Fields.  |
| 42. Animal Hospitals, Shelters, and Kennels.   | 48. Governmental and Cultural Uses such as fire and police stations, community centers, libraries, public emergency shelters, parks, playgrounds, and museums. |
|  | 49. Utilities.   |
|  | 50. Schools and churches.  |

A-5: Covering approximately 4,000 acres.

The Agricultural-Rural Residential District contains "relatively small quantities of land in predominantly agricultural areas for rural residential use. As a matter of policy, it is intended that this district be applied solely to those rural lands that have marginal utility for agricultural use for reasons related to soils, topography, or severance from larger agricultural parcels. It is not intended that this district be utilized to accomodate residential subdivisions...".<sup>28</sup>

Permitted uses in this district include: single-family dwellings, home occupations, orchards, vegetable raising, plant nurseries, greenhouses, and roadside stands not exceeding one per farm. Conditional uses include: sewage disposal plants, governmental and cultural uses, utilities, schools, and churches. The minimum lot size for permitted or approved conditional uses is 40,000 square feet. This district, at least in the case of La Grange Township, has proven troublesome. This will be discussed later.

In addition to the five agricultural districts, the ordinance establishes three conservation districts. Together, these three districts cover some 87,500 acres or 24.5 percent of the County's total land area. The districts are: (1) C-1 Lowland Resource Conservation District; (2) C-2 Upland Resource Conservation District; and (3) C-3 Conservancy-Residential District.

C-1 Lowland Resource Conservation District: Covering approximately 35,000 acres.

Designed to protect lakes, streams and wetlands, this district permits farming, recreation, and conservation uses. No buildings or structures are permitted in the district.

C-2 Upland Resource Conservation District: Covering approximately 40,000 acres.

This district is intended to protect scenic areas, submarginal farmlands, woodlands, and abandoned mineral extraction areas. The district provides for agricultural, conservation and recreation uses, and permits a single family dwelling on a five acre minimum.

C-3 Conservancy-Residential District: Covering approximately 3,000 acres.

Essentially, this is a C-2 district located close to urbanizing areas and high value lake areas. Lands in this district are characterized by smaller lots and higher residential development values. Recreation, conservation and single family dwellings are permitted uses. Dwellings must be built upon a lot size of at least 100,000 square feet.

The ordinance also sets forth a series of residential, commercial, and industrial districts. In the seven residential districts permitted uses include single family dwellings, multiple dwellings, and mobile home subdivisions. Lot sizes range from less than 12,000 square feet to one acre and up. The highest density is permitted in the Planned Residential Development District with eight dwelling units per net developable acre.

V. GOVERNMENTAL ROLES

There are four main actors in the evolution of the Walworth County program. First, the Soil Conservation Service developed a soil survey for Walworth County which was used by the regional planning agency in preparing the regional plan and also used by the County staff in setting forth their zoning ordinance.

The Southeastern Wisconsin Regional Planning Agency prepared the 1990 Land Use and Transportation Plan which serves as the basic county plan. The regional agency also provided much of the soils data essential to the County ordinance and also made aerial photographs available for use in designating zoning districts.

The County administers the zoning ordinance for fifteen of the sixteen townships. This is done at the request of the townships. In the sixteenth township, Lafayette, administration has been retained at the Township level, but the ordinance in Lafayette is based upon the County-wide ordinance. (See Figure 9-3).

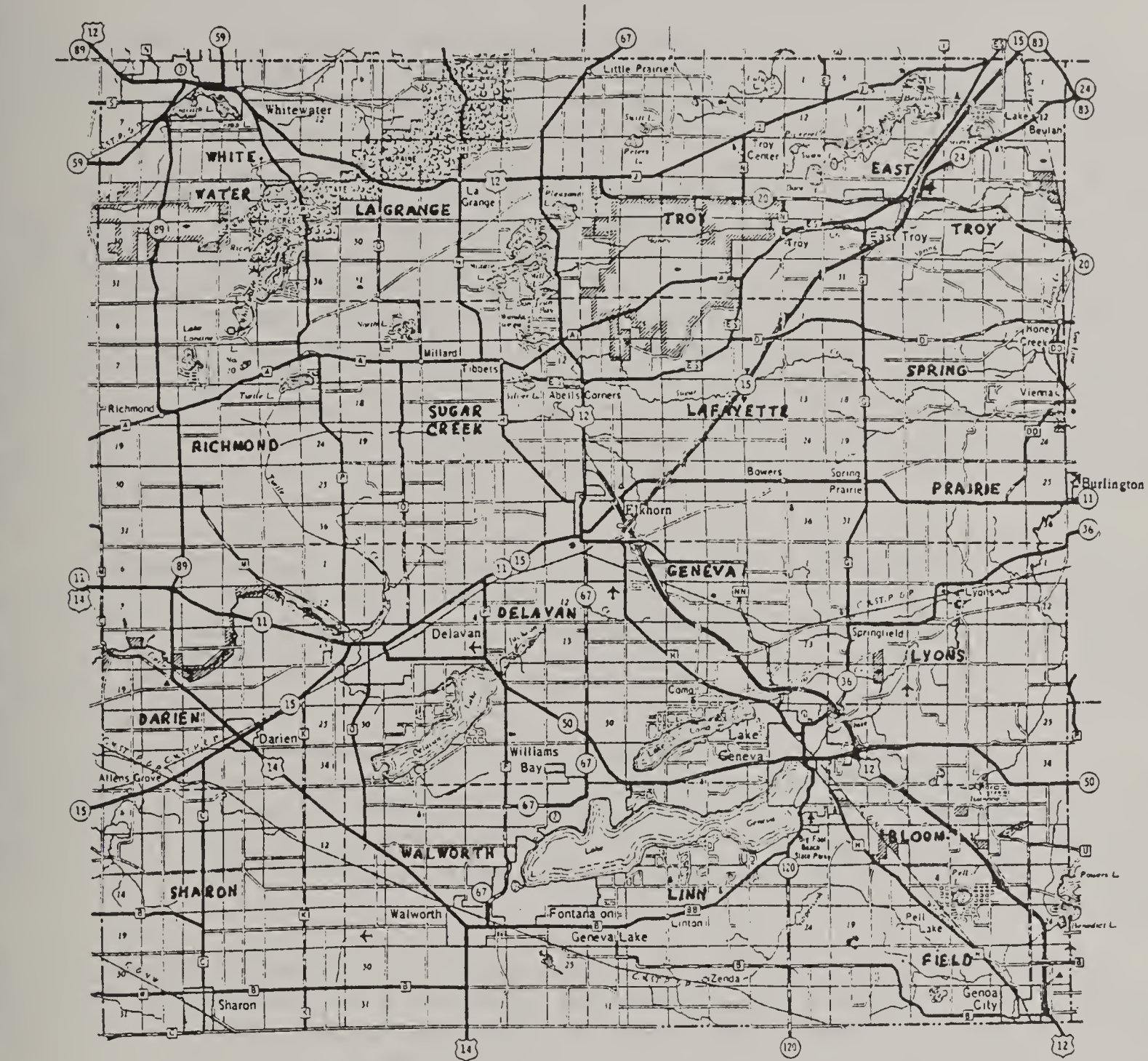
Finally, the state of Wisconsin has come to play an important role in the development of the Walworth County program (see Case Study Number 17). Through the combined income tax credit and planning program, the State provided important incentives for the planning and regulation of prime agricultural land.

Administrative Costs

In 1967, the County had a planning staff of two professionals--a zoning administrator and a sanitation technician. By 1972, there were seven professionals and three clerical. Currently, the staff has seven professional and three clerical workers. Interviews indicate that the ordinance required approximately one man year per year from 1967. Assuming a cost of \$15,000 per man year plus an indirect cost of \$7,500, the annual cost approaches \$22,500. Yet the ordinance does generate fees (returning approximately 10 percent of the planning budget per annum), and the County would have had similar planning costs in the development of other new ordinances.



Figure 9-3



### LEGEND

- |  |  |                              |
|--|--|------------------------------|
| Portland Canal<br>or<br>British Columbia |  | Carl Town Boundary           |
| Shumachen                                |  | Carl Town Limits             |
| Gravel                                   |  | Red & Stone Forest           |
| Earth                                    |  | Airport                      |
| *Town Road                               |  | Fish Hatchery                |
| Fire Lane                                |  | Game Park                    |
| Multiple Divided                         |  | County Seat                  |
| Freeway                                  |  | Unincorporated Village       |
| Interchange                              |  | Schools                      |
| Highway Signal when                      |  | Public Road or Fish Creek    |
| Interstate Highway No.                   |  | Markings                     |
| U.S. Highway No.                         |  | Transfer Station             |
| State Highway No.                        |  | Public Camp or Public Gravel |
| County Map Letter                        |  | State Park                   |
| Roadway                                  |  | without Campsites            |
| Dam                                      |  | without Campsites            |
| State Boundary                           |  | with Facilities              |
| County Boundary                          |  | without Facilities           |
|  |  | Boys' Life                   |
|  |  | School for Deaf              |
|  |  | Federal Observatory          |
|  |  | Various State Utility Only   |
- \*Surface type as shown north and shown

MILES OF HIGHWAY	
as of Jan. 1, 1975	
.....	192
.....	201
ROADS.....	943
ROADS.....	9
FOR COUNTY.....	1,250

Land Area	560 Sq. Yds.
Population	67, 679
County Seat	E. Green

## CIVIL TOWNS

WHILEWATER	LA GRANGE	TROY	EAST TROY
RICHMOND	SUGAR CREEK	LAFAYETTE	SPRING PRAIRIE
DARIEN	DELAVER	GENEVA	LYONS
WARREN	BALWORTH	LYNN	BLOOMFIELD



WALWORTH CO.

DEPARTMENT OF TRANSPORTATION

# DIVISION OF HIGHWAYS

STATE OFFICE BUILDING  
COLUMBUS, OHIO 43260-1099

Corrected for

JAN. 1976

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Based on Aerial Photographs

WALWORTH 64-2

Source: Rich, Stuart M. et al., Overall Economic Development Plan Walworth County, Wisconsin, Overall Economic Development Committee, Elkhorn, Wisconsin, 1977, Page 10c  
9-19



## VI. PROGRAM APPLICATION

Walworth's actions on proposed zoning changes provide an important insight into the effectiveness of its regulatory program. While some local programs may be recommended on the basis of their rigorous planning methods or by virtue of their regulatory precision, decisions on proposed zoning changes illustrate the degree of commitment by decision-makers to the purpose and intent of their agricultural zone. If re-zonings are granted as a matter of course without any examination or understanding of how the proposed change will effect the agricultural zone, chances are that the purpose of the zone will be undermined. Similarly, if the decisions on zoning changes are made on the basis of how the proposed change conforms to the purpose or intent of the zones affected, chances are that the purpose of the zone is being met.

In Walworth County there are four important governmental factors in dealing with proposed amendments to the zoning ordinance. They are: (1) County planning staff; (2) County Parks and Planning Commission (equivalent of the planning commission); (3) County Board; and, (4) Township Boards.

The first step in the process is taken when the applicant approaches the planning staff for information on the process. Typically, staff gives the applicant an informal staff evaluation of the likelihood of petition approval. Many petitions stop at this point and never reach the stage of a formal request.

Second, the petitioner files an application with the zoning office with a hearing fee of \$50.00. The planning staff prepares a staff report on the petition which includes commentary on: (1) Present zoning and proposed zoning on the parcel; (2) Comformance with the regional plan; (3) Compatibility with surrounding land uses; (4) Environmental evaluation; (5) Public service impact; and, any unique or special impacts of the proposed zoning change. In most cases, the staff also makes a recommendation to the Parks and Planning Commission--to approve, to approve a modified proposal, or to deny.

The Parks and Planning Commission conducts regularly scheduled hearings on the 3rd Thursday of each month. At the hearing, testimony on the proposed re-zoning is taken. Following the hearing, commissioners visit the site of the proposed re-zoning and, shortly thereafter, make a recommendation to the County Board--to approve, to approve a modified proposal, or to deny.

The official approval or denial of the re-zoning petition is made by the County Board at a hearing which follows the recommendation of the Parks and Planning Commission. Township Boards may deny, but not approve, a re-zoning petition by submitting a denial resolution to the County within 10 days of the Board's public hearing.

An evaluation of zoning petitions involving a proposed change from A-1 to less restrictive categories was conducted for 15 of Walworth's 16 townships (See Table 9-1).<sup>29</sup> Between the period Aug 13, 1974 to July 31, 1979, 112 re-zoning petitions were filed. Of these, 72 or 64 percent were approved, and 40 or 36 percent were either denied or withdrawn. Approved petitions covered roughly 1093 acres, while petitions denied or withdrawn covered 2,646 acres. During this period, the lands in the A-1 District decreased by roughly 1093 acres representing .005 percent of the 201,500 acres in the A-1 District.

Although the County has a high rate of approval of re-zoning petitions (64 percent), it is important to note that in most cases the County Officials had reasonable planning justification for their actions. A detailed examination of re-zoning petitions in the period Aug 13, 1974 to Dec 31, 1977 (See Table 9-2) showed that 73 cases were considered. Of these, 50 or 68 percent were approved. 23 or 32 percent were denied or withdrawn. The approved petitions covered some 891 acres for an average approval of 17.83 acres while denial/withdrawals included 1626 acres or an average acreage of 70.69 acres.

Of the 50 approvals (See Table 9-3) six were identified which did not merit approval--that is, they appeared to violate the purpose and intent of the A-1 District. Of the remaining 44, 43 or 86 percent had reasonable planning justification, and one case could not be verified.

The 43 justifiable cases fell into five main criteria for approval. The first were corrections to the zoning ordinance. This would occur where lands were incorrectly placed in the A-1 District such as previously platted subdivisions, subdivisions with preliminary plats approved before the new ordinance took affect, non-agricultural uses inadvertently included in the district and so forth. Zoning corrections were found in eight cases or 16 percent of the approvals.



Table 9-1

RE-ZONING PETITIONS: AUGUST 14, 1974 - JULY 31, 1979

	<u># Petitions</u>	<u>Percent</u>	<u>Total Acres</u>	<u>Average Size (Acres)</u>
Total:	112	100	3739	33.38
Approvals:	72	64	1093	15.18
Denial/ Withdrawal:	40	36	2646	66.16

\*Acreage figures are approximate. When multiple zoning districts were included in the petition, it was difficult to allocate the total parcel into respective districts.

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Source: Walworth County, Wisconsin Planning Department, Records on Re-zoning petitions.

Table 9-2

RE-ZONING PETITIONS: AUGUST 14, 1974 - DECEMBER 31, 1977

	<u># Petitions</u>	<u>Percent</u>	<u>Total Acres*</u>	<u>Average Size (Acres)</u>
Total:	73	100	2517	34.47
Approved:	50	68	891	17.83
Denial/ Withdrawal:	23	32	1626	70.69

\*Acreage figures are approximate. When multiple zoning districts were involved in the petition, it proved difficult to allocate the total parcel into respective districts.

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Source: Walworth County, Wisconsin Planning Department, Records on re-zoning petitions.

Table 9-3

PRINCIPAL CRITERIA FOR DECISION-MAKING IN APPROVING PETITIONS:  
AUGUST 14, 1974 - JULY 31, 1977

Principal Criteria	<u># Cases</u>	<u>Percent of Cases</u>
1. Correction to the Zoning Ordinance:	8	16
2. Poor soils, odd lot, Wooded, or Untilled:	5	10
3. Expand Existing Use:	4	8
4. Agricultural Related Use:	3	6
5. Conforms to County/ Regional Plan, and, Compatible with existing land use:	23	46
6. Inadequate Justification:	6	12
7. Information not Available:	<u>1</u>	<u>2</u>
TOTAL:	50	100

---

Source: Walworth County, Wisconsin Planning Department, Records on re-zoning petitions.



In five cases (10 percent of approvals) the justification centered on the poor quality of soils, vegetative cover, or whether the land had been tilled in recent years. In four cases (8 percent) approvals were given to expand existing uses--in three of these cases, the lands were for an extension of cemeteries and in one case for a parking lot. In three cases (6 percent), the petition was granted to enable the applicant to initiate an agricultural related industry. And in 23 cases (at 46 percent the largest single category), the approval was given since the petition was in conformance with the county (or) regional plan as well as compatible with surrounding land uses.

For the most part County officials were careful in making decisions on re-zoning. Officials appeared to error in only 6 or 12 percent of the petitions approved. And even in approving petitions, officials often modified the petitions (7 cases) to eliminate good A-1 lands from re-zoning consideration or to change the intended designation so that it was in line with surrounding land uses or the county plan.

The County's record is more impressive when considering the consistency between the Parks and Planning Commission and the County Board. In all approvals between Aug 13, 1974 and Dec 31, 1977, the recommendation of the Parks and Planning Commission was followed by the Board. In five cases, the Parks and Planning Commission disagreed with the recommendation of the County Planning Staff. Further, the tables do not show the many cases where applicants were discouraged by the County Planning staff from filing. County planners estimate that as many as 30% of proposed re-zonings never get to the hearing stage as they are discouraged by staff in early discussion with potential petitioners. Thus, the Walworth record in the treatment of re-zoning petitions is a good one.

The discussion of the County's re-zoning actions would not be complete without considering the 3,998 acres which were re-zoned from A-2, A-3, and A-5 to A-1 (See Table 9-4). These lands were re-zoned in 1978 (2,557 acres), 1979 (1,062 acres), and 1980 (379 acres). These re-zonings were made at the request of landowners whose interest stemmed from the income tax credits available through Wisconsin's Farmland Protection Program (See Case Study 17). Thus, while 1,093 acres were re-zoned out of the A-1 district from Aug 14, 1974 to Dec 31, 1979, some 3,619 acres were re-zoned into the A-1 category.

Table 9-4

RE-ZONING PETITIONS: FROM A-2, A-3, and A-5 to A-1

<u>Year</u>	<u>Acres</u>
1978	2,557
1979	1,062
1980	<u>379</u>
TOTAL	3,998

---

Source: Walworth County, Wisconsin Planning Department

While the Parks and Planning Commission and the County Board made good decisions on re-zoning petitions, the same cannot be said for their initial zoning designation of the A-2 District permitting single family homes on five acre lots. Initially, this district, covering roughly 38,000 acres, was to have a 20 acre minimum lot size. But the development industry opposed the 20 acre minimum, especially in light of the 35 acre minimum lot size governing 201,500 acres of prime agricultural land. Decision-makers compromised on the A-2 District and agreed to a five acre minimum lot size.

By early 1980 it was clear that the A-2 District had failed to "maintain, preserve, and enhance agricultural lands historically utilized for crop production ... and which are generally best suited for smaller farm units."<sup>30</sup> The five acre minimum lot size had not worked to preserve small farm operations or to protect (as a buffer zone) lands in the A-1 District. Instead, "many of hundreds of acres of...agricultural land have been converted to five acre residential subdivisions."<sup>31</sup>

The A-2 zone proved particularly troublesome in La Grange Township where, because of strong political resistance, the County Board allowed Township officials to zone lands into the A-2 category which, by county-wide definitions, should have been classified into the A-1 District. In so doing, the Township and County Board partially subverted the intent of the A-1 District both within the Township and adjacent to it.



The difficulty with A-2 across the County eventually surfaced at Township Boards. The Townships came to realize that A-2 was not protecting agriculture and that it was leading to frictions between farmers and nearby suburbanites. The Town of East Troy initiated zoning changes on much of their A-2 zone to restrict residential development. Other Townships expressed concern.

The County Parks and Planning Commission re-considered their initial five acre minimum lot size. The development industry, as before, campaigned against the change. County planners pointed out that two conservancy districts allowed 5 acre lots and that there were 40,000 acres of such land in Walworth. Thus, "Walworth County could easily quadruple our rural population without developing any productive farmlands..."<sup>32</sup>

In late 1980 the Parks and Planning Commission recommended that the minimum lot size in the A-2 District be changed from 5 acres to 20 acres. The County Board agreed, but in response to pressure from development interests, the Board determined that all A-2 landowners would receive a free re-zoning hearing if landowners so desired. The hearings--at an estimated cost of \$30,000--are now underway and being completed township by township. It is too early to evaluate the results of these hearings, but it does appear that landowners are not receiving blanket acceptance of their re-zoning petitions from either the Parks and Planning Commission or the County Board. In Walworth Township, for example, all re-zoning requests were denied.

#### Lafayette Township--A Special Case

Lafayette Township is the only township in the County which adopted and administers its own ordinance. The Township ordinance is patterned after the County ordinance, but the Township approach was quite different.

Unlike the County, the Township used a simple criteria in designating lands for the most restrictive (A-1) zoning category. Lands which were historically in agriculture were given the A-1 designation. This meant that as a percent of total land, the township had considerably more land in the A-1 category (and less in all other categories) than did the county. Given this approach, the Township also deals with considerably more requests for zoning changes than does the County. And since the Township does not have planning staff, Township officials must rely upon themselves and the applicant to generate the information crucial to effective decision-making. This has proven difficult.



The problem lies in the criteria used for decision-making and in the information available to Township officials. In the Township, information is presented on the nature of the proposal, the compatibility of the proposed zoning to the County and Regional Plan and to surrounding properties. There is no information gathered on the characteristics of land (soil type and qualities), impacts on utilities, roads, recreation, commercial needs, or other relevant factors. Further, much of the information that is provided is provided by the applicant, not a neutral source.

In the two year period, from 1977 to 1979, the Township granted zoning changes involving 515 acres of A-1 land. The zoning changes, for the most part, permitted residential development on 5 acre lots, 2.5 acre lots, and one (to R-5) which permits eight dwelling units per developable acre.

In some cases, the re-zonings were granted in violation of good planning criteria. One such petition, for example, involved an approval of a re-zoning of 76 acres of A-1 land to R-5, Planned Residence Development District. This district would allow homes on lots as small as 20,000 square feet. The site was next to a working farm and a cattle raising operation and was traversed by drainage from the farm and was also subject to all the by-products of this active farm. In approving such a petition, Township officials almost guaranteed the type of suburban/agricultural conflicts that arise when subdivisions are located in active farming areas. But the Township Board was reacting to the soil quality on the site. The soils were not prime and thus not suited to the A-1 designation. Still, the Township would have been better served had Officials left the land in A-1 or approved a change to a A-2.

In fairness, it must be remembered that the Township zoned its land on the basis of historical agricultural use. As a result, considerable acreage was included in the most restrictive category that simply did not belong there. Thus, many re-zoning requests have merit. However, the difficulty in the Township is in dealing with technical planning issues. While a re-zoning might be merited, for example, the Township has difficulty in pinpointing the proper zoning category.

The problem in Lafayette Township does not subvert the basic intent of planning and zoning in Walworth County. It is a technical planning issue which could be solved by a more detailed examination of specific re-zoning requests. Even a more complete planning report would be a substantial contribution. In any event, discussions with Township officials indicated that they may soon turn over their zoning work to the County.

## VII. PERCEPTIONS OF THE PROGRAM

Interviews were conducted with County staff, elected officials, appointed officials, real estate agents, bankers, extension agent, and farmers to determine the varying perceptions of the program. The people interviewed demonstrated a good understanding of the program, and the responses shared a high level of consistency.

Officials and staff felt that the zoning ordinance was meeting the basic goals it was intended to serve: (1) protection of prime agricultural land; (2) preservation of environmental corridors; (3) balanced economic growth; and, (4) concentration of population in established population centers.

In meeting the goal of prime land protection, several factors were identified. Farmers, the primary beneficiaries of this goal, had taken to the program with "grudging acceptance." Officials felt that the program enjoyed the support of over 50% of the farming community.

Real estate and banking interests concluded that the program had changed the nature of land speculation in the county. In particular, the only speculation now occurring in prime agricultural land was for a long term agricultural investment. Before the program was adopted, considerable speculation was occurring in agricultural land for non-agricultural purposes. After the program was adopted, non-agricultural ventures began to dissipate. Farmers began purchasing land from other farmers and from speculators who now wanted to rid themselves of the investment. Listings with real estate agents diminished as land sales moved quickly between neighbors.

Although interviewees indicated that the zoning approach was an important factor in changing the nature of speculation, interviewees also identified other factors. Rising commodity prices, for example, had made agriculture a better investment. High mortgage costs and energy prices also worked to keep subdivision pressures lower than they had been in the past. When these factors were combined with the zoning approach, the effect on speculation was cumulative.

The zoning ordinance, however, would not have been effective if the County had not been vigilant in its review of re-zoning petitions. The general consensus was that re-zonings were difficult to get. Staff concurred that the

the level of support for zoning was solid with the Parks and Planning Commission, Township Boards, and the County Board.

The effects of the ordinance on the housing market appeared to be minimal. While land markets may have shifted within the county, absolute levels of market activity, particularly for housing, remained the same. Data on construction activity for Walworth County supports this observation (See Table 9-5).

Table 9-5

RESIDENTIAL BUILDING PERMITS (WITH ATTACHED GARAGE) IN WAL-  
WORTH COUNTY, 1970-1979

<u>Year</u>	<u>Permits</u>	<u>Average Value of Residential Building Permit</u>
1970	89	\$21,296
1971	81	\$22,407
1972	104	\$24,350
1973	146	\$24,684
1974	145	\$29,092
1975	230	\$31,280
1976	283	\$36,003
1977	409	\$40,865
1978	363	\$42,810
1979	187	\$46,882

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Source: Walworth County, Wisconsin Planning Department  
Annual Statistical Reports, 1970-1979



These data show that Walworth County continued to attract substantial residential activity. Indeed, in the years (1975-1979) following the adoption of the ordinance, the number of residential building permits was higher than that of any year back to at least 1969.

Speculative activity also continues in the County. This activity now centers on two zoning classifications: C-2 and C-3. Heretofore, the A-2 District with its five acre minimum lot size was also subject to speculation, but it is expected that the increase in minimum lot size to twenty acres will temper speculative activity.

Although interviewees pointed out a series of problems with the ordinance, the general level of acceptance was high. Farmers, who at first feared the ordinance would drive down land values, have seen their land values continue to rise for agricultural purposes. Real estate and banking interests see that the program has not affected building activity and may have strengthened agricultural land markets. County officials and staff are well satisfied with the program operation and showed no indication of major dissatisfaction. There have been no legal challenges to Walworth's ordinance.

Footnotes

1. Rich, Stuart M. et al., Overall Economic Development Plan, Walworth County, Wisconsin, Overall Economic Development Plan Committee, Elkhorn, Wisconsin, 1977, p. 11-12.
2. Ibid., p. 30
3. U.S. Department of Commerce, Bureau of the Census, Current Population Reports, Series P-25, "Population Estimates for Counties, Incorporated Places and Minor Civil Divisions."
4. Rich, supra note 1, p. 30.
5. Southeastern Wisconsin Regional Planning Commission, A Regional Land Use Plan and a Regional Transportation Plan for Southeastern Wisconsin - 2000, Southeastern Wisconsin Regional Planning Commission, Waukesha, Wisconsin, 1978, p. 46.
6. Rich, supra note 1, p. 10.
7. Johnson, James, "Case Study of Walworth County, Wisconsin Land Use Program", Unpublished Paper, 1976, p. 1
8. Rich, supra note 1, p. 46-b.
9. Ibid., p. 46.
10. Ibid., p. 23.
11. Ibid.
12. Ibid., p. 25.
13. Ibid.
14. U.S. Department of Commerce, Bureau of Economic Analysis.
15. Ibid.
16. U.S. Department of Commerce, Bureau of the Census, 1978 Census of Agriculture, Preliminary Report, Walworth County, Wisconsin, March 1980, Table 1.
17. Ibid.
18. Ibid.
19. U.S. Department of Commerce, Bureau of Economic Analysis

20. U.S. Department of Commerce, *supra* note 16, Table 2 and Table 3.

21. Southeastern Wisconsin Regional Planning Commission, The Regional Land Use-Transportation Study, Volume 3, Recommended Regional Land Use-Transportation Plans - 1990, Waukesha, Wisconsin, 1966

22. Southeastern Wisconsin Regional Planning Commission, *supra* note 5, p. 11.

23. In 1978, the Agricultural Land Preservation Board of the State's Farmland Preservation Program approved Walworth County's agricultural preservation plan and zoning ordinance in 1978.

24. Board of Supervisors, Walworth County, Zoning Ordinance, adopted 13 August 1974, amended 24 November 1975 and 5 April 1976, Elkhorn, Wisconsin.

25. *Ibid.*, Section 3.3.

26. *Ibid.*

27. *Ibid.*

28. *Ibid.*

29. The data on re-zoning petitions contained in this case study are more complete than the data summarized in, Toner, William, "Land Use Controls: Agricultural Zoning", in Coughlin, Robert E., et al, The Protection of Farmland, A Reference/Guidebook for State and Local Officials, National Agricultural Lands Study, Washington, D.C., 1981. Between the time that this case study was put in final form (February 1981) and the time of the Reference/Guidebook (October 1980), additional information became available. This information is presented here and represents an update of the data in the agricultural zoning chapter of the Reference/Guidebook. Although the numbers have changed, the conclusions have not.

30. Board of Supervisors, *supra* note 24.

31. Kolb, Harold H., Chairman, Walworth County Park and Planning Commission, Letter to the Editor, "Should Walworth County's Agricultural Land Be Protected?", Walworth County, Wisconsin Parks and Planning Commission, Elkhorn, Wisconsin, May 8, 1980, p. 2.

32. *Ibid.*





Case Study No. 10

LARGE LOT AGRICULTURAL ZONING IN TULARE COUNTY, CALIFORNIA

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LARGE LOT AGRICULTURAL ZONING IN TULARE COUNTY, CALIFORNIA

BY

WILLIAM TONER

I. INTRODUCTION

At first glance Tulare County is an unlikely prospect for a farmland protection program. It is a huge county, covering 3.1 million acres, with an average of one person for every 13.8 acres. The County lies roughly midway between Los Angeles to the southwest and San Francisco to the northwest (See Figure 10-1). Tulare is in the southern half and on the east side of the San Joaquin Valley, the great central valley of California.

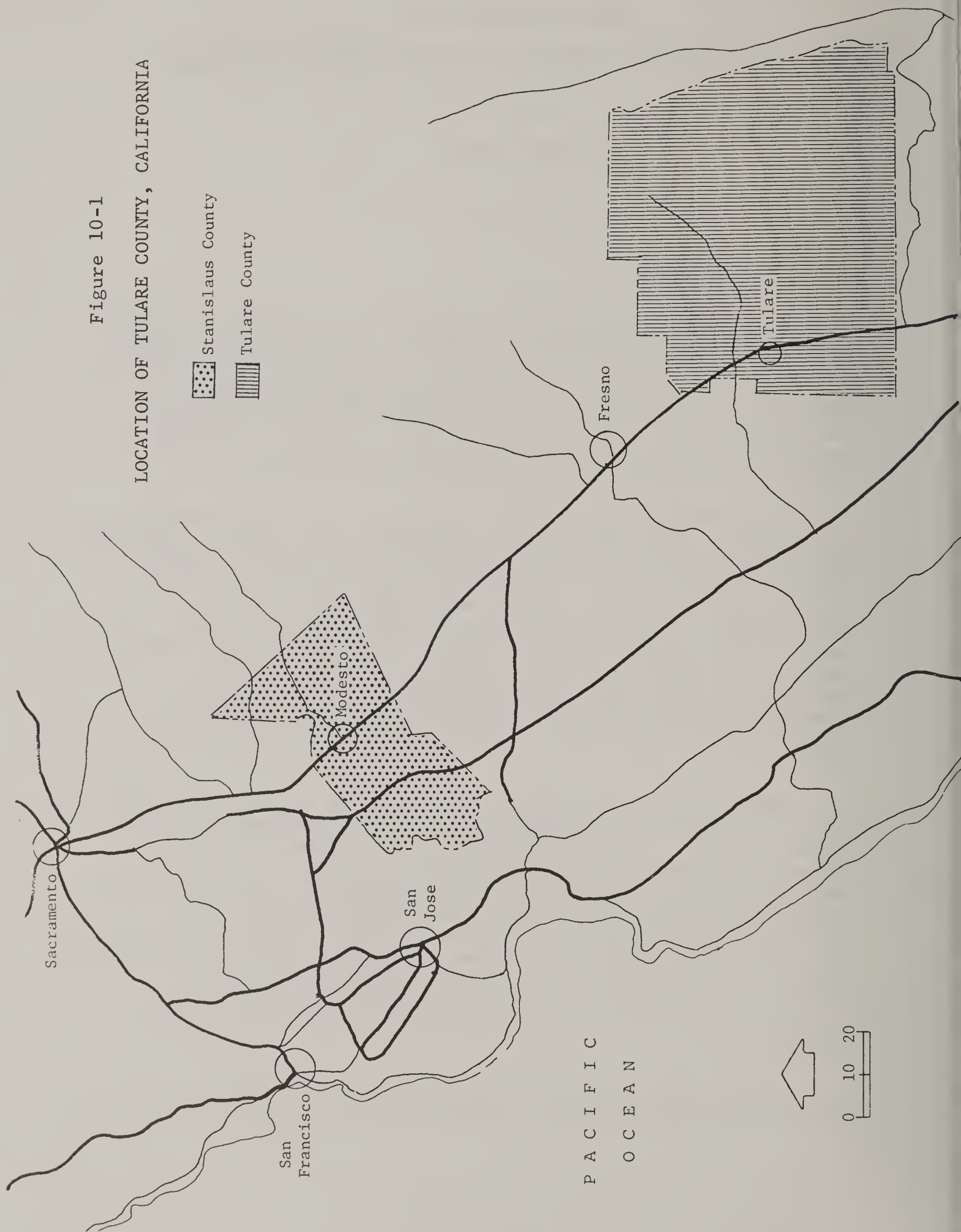
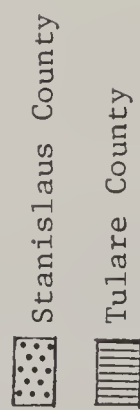
Topographically, Tulare is split into three major divisions. The valley floor dominates the western boundary with gentle to rolling slopes along the eastern margin of the valley floor. Elevations range, in the valley floor area, from 270 to 600 feet above sea level. The foothill region borders the valley floor to the east. The foothill region begins as terraces and, moving eastward, changes to gentle slopes and then rises sharply to 3000 feet above sea level. The eastern boundary of the County is mountainous with elevations ranging from 3,000 feet to over 14,000 feet above sea level.

While Tulare has over three million acres, less than half is under the jurisdiction of local government (See Figure 10-2). 1,545,638 acres are in Federal ownership--Sequoia National Forest, Sequoia and Kings Canyon National Parks, the Tule Indian Reservation, and assorted reservoirs and canals. The State of California owns another 26,436 acres, and large segments of the remainder are under the control of three principal cities--Porterville, Tulare, and Visalia--and smaller population centers. Tulare County actually has jurisdiction over roughly 1,450,000 acres or 46 percent of the total land in the County.<sup>2</sup>

Since 1900, population has increased steadily. In 1900, the Census showed a population of 18,375, but by 1978

Figure 10-1

LOCATION OF TULARE COUNTY, CALIFORNIA



PACIFIC  
OCEAN

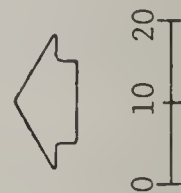
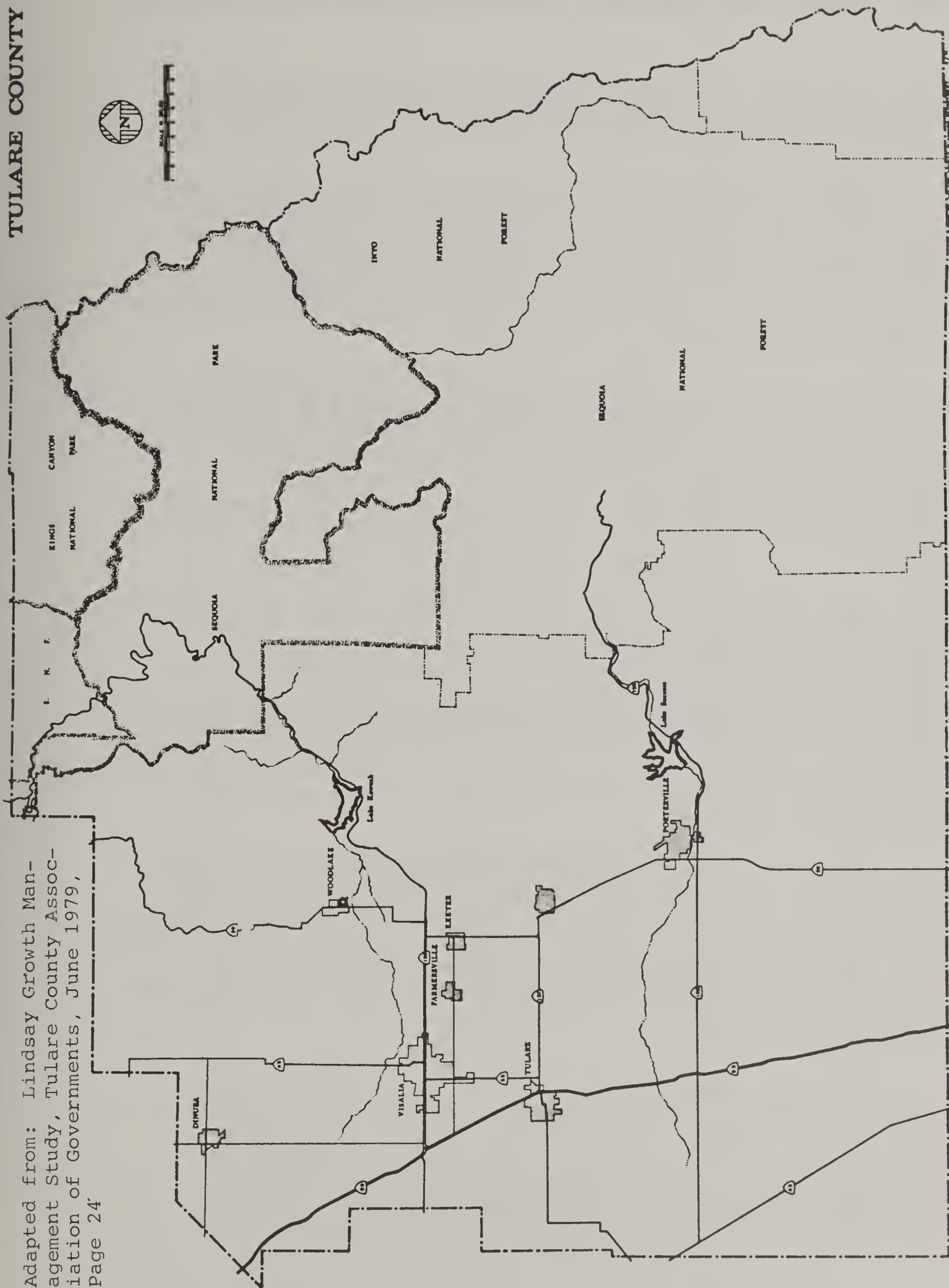


Figure 10-2: TULARE COUNTY, CALIFORNIA

Adapted from: Lindsay Growth Man-  
agement Study, Tulare County Assoc-  
iation of Governments, June 1979,  
Page 24





the estimated population stood at 225,159.<sup>3</sup> The 1978 estimate was up sharply from 1960 when the population stood at 188,322.<sup>4</sup>

Because only 1,450,000 acres are under County control, the population per acres is misleading. Using the more accurate 1,450,000 acres as a base, the population per acre figure in 1960 stood at one person for every 8.61 acres. By 1970 it had dropped to one person for every 7.69 acres, and by 1978 it had dropped even further to one person for every 6.43 acres.

The total farm income produced by the 1,450,000 acres is staggering. In 1978 the estimated farm income was \$221,923,000, a figure which exceeded that of many states including Montana, Wyoming, Vermont, Idaho, North Dakota, Utah and Maryland.<sup>5</sup> The value of agricultural production in the County in 1979 exceeded the one billion mark, \$1.23 billion--up from \$328,000,000 in 1958.<sup>6</sup>

Agriculture dominates the economy. 1978 figures show that farm employment constituted 19.8 percent of total employment.<sup>7</sup> Total farm income was 22.7 percent of total income in the County.<sup>8</sup> Figures from the California Employment Development Department for 1977 show that agricultural production and agricultural services account for 31.7% (27,000) of all jobs in the County (See Table 10-1). The next largest category is government with 19.7 percent (16,850 jobs) and then retail trade with 13.6 percent (11,600).

Compared to most counties, agricultural production is diverse. In 1978, for example, 241,328 acres were producing crops; 11,919 acres were devoted to vegetables and 3,621 acres to seed crop. In addition, the County produced over nine million dollars of nursery products, over \$144,785,000 of livestock and poultry, over \$173,993,000 of livestock and poultry products, and \$1.4 million of apiary products.<sup>9</sup>

Clearly, Tulare County has an agricultural base which is central to the economic, social and cultural life of the County. Given the levels of production (some areas of the county may produce three or four crops per year), the County can be seen as a unique regional, state and even national resource. All of this has not been lost on the people of Tulare.

TABLE 10-1  
WAGE AND SALARY EMPLOYMENT BY INDUSTRY  
TULARE COUNTY

ANNUAL AVERAGES 1976 - 1977

	1977	1976	1975	1974	1973	1972
<u>All Industries - total</u>	<u>85,150</u>	<u>79,700</u>	<u>77,150</u>	<u>77,850</u>	<u>73,000</u>	<u>74,850</u>
Agriculture, forestry, fish.	27,000	25,400	25,350	27,000	24,700	28,200
Agric. production	17,350	16,050	16,500	18,400	17,500	20,050
Agric. services	9,650	9,350	8,850	8,600	7,200	8,150
Total non-agricultural	58,150	54,300	51,800	50,850	48,300	46,650
Mineral extraction	0	0	0	0	0	0
Construction	3,100	2,400	2,200	2,500	2,700	2,400
Manufacturing	9,650	9,150	8,350	9,300	8,700	7,850
Nondurable goods	4,500	4,450	4,250	4,350	3,950	3,700
Durable goods	5,150	4,700	4,100	4,950	4,750	4,150
Trans. and pub. util.	3,250	3,250	3,200	3,050	3,050	2,950
Wholesale trade	4,200	4,250	4,150	4,150	3,600	3,850
Retail trade	11,600	10,800	10,100	9,500	9,250	9,000
Fin., ins., & r.e.	1,800	1,600	1,500	1,400	1,400	1,350
Services	7,700	6,950	6,600	6,850	6,200	5,750
Government	16,850	15,900	15,700	14,100	13,400	13,500

Source: California Employment Development Department,  
Annual Planning Information: Tulare County, 1978 - 1979

Taken From: Williams, Keubelbeck and Associates, Visalia Growth Study,  
City of Visalia, California, 1971, Table 1

Conflicts between the agricultural base and population centers stem from a rapidly developing non-agricultural economy and the consequent increases in population. In 1950, for example, the Bureau of the Census set total employment at 46,640.<sup>10</sup> In 1960, this figure moved to 56,923 and in 1970 total employment reached 65,562.<sup>11</sup> Eight years later, estimated total employment in Tulare had jumped to 97,047.<sup>12</sup> Since 1970, agricultural employment has held fairly steady, but all other major categories have increased.<sup>13</sup> Thus, population jumped from 149,264 in 1950 to an estimated 225,159 in 1978.

All of this sets the stage for what happened in Tulare County. It is a phenomenally rich agricultural county which is now subject, for the first time, to substantial non-agricultural development. Agricultural wealth is centered in 504,285 acres of prime soils which are located in the San Joaquin Valley along with the majority of the 225,159 people.<sup>14</sup> Current projections indicate that Tulare County will add another 53,600 people by the year 1990.<sup>15</sup> Given the pattern of development, most of these people are likely to wind up in the Valley. Thus, the potential for continuing conflict is established.



## II. PROGRAM DESCRIPTION

Tulare features a variety of planning, regulatory, fiscal control devices. These basic tools are joined by a series of informal methods and processes which reinforce the key program elements. Thus the Tulare program contains both formal tools and informal methods.

### Williamson Act

The history of Tulare County's program to protect agricultural land can be traced to California's Land Conservation Act of 1965--commonly called the Williamson Act.<sup>16</sup> While declaring the State's interest "to maintain, preserve, conserve, and otherwise continue in existence open space lands for the production of food and fiber...", the Act provided that "assessment practices must be so designed as to permit the continued availability of open space lands...". In particular, the Act compelled assessors to "assess such open space lands on the basis only of such restriction and use."<sup>17</sup>

The Act permits cities and counties to establish agricultural preserves. Once established, landowners within the preserves may enter into contract with the city or county to keep their lands in agricultural use. In return for this, cities and counties modify property tax assessments so that the assessments reflect the restrictions on land use. This means that farms will be assessed on the basis of their agricultural value alone.

The contract runs for a minimum of ten years and, if no action is taken by the landowner or governing body, is renewed automatically each year. There are two mechanisms which may permit withdrawal from the contract. The first is a "Notice of Non-Renewal" that may be filed by either the landowner or the governing body. Once filed, the contract terminates ten years from the most recent annual date of renewal. During the ten years preceeding the expiration of the contract, tax assessments on the property will increase so that by the final year the property will be assessed at full market value--as if the land had never been under contract.

The second method of withdrawing from the contract is cancellation. Cancellations occur where the contract is terminated before the normal ten year period. In this instance, a landowner petitions elected officials for termination. Elected officials, in order to approve the termination, must find that the cancellation is consistent

with the purposes of the Act and is in the public interest. Further, the Act establishes that economic gain or economic loss, per se, are not sufficient cause for cancellation. Cancellation may only be approved if, in the case of economic gain, there is no alternative non-contract land suited to the proposed use, and, in the case of economic loss, if there is no other reasonable agricultural use to which the land under contract may be put. If cancellation is approved, the land is re-assessed and the landowner is normally required to pay 50% of the newly assessed value of the property as penalty.

In Tulare County the process of forming an agricultural preserve begins with the landowner.<sup>18</sup> Landowners get application forms from the County Planning Department. These applications must be filed and requisite fees paid by October 15 of each year. Once filed, the application is reviewed by the Planning Staff and, if found complete, a hearing date is set for the County Board of Supervisors. If the application is approved by the Board, the agricultural preserve is established.

In evaluating proposed preserves, the County relies upon the general requirements of the Act as well as upon local plans and policies. The general requirements provide that the preserve must be at least 20 acres or 1/32 of a section, whichever is less. Smaller parcels may be combined to meet the minimum size or a parcel may be annexed to an existing preserve to meet the minimum size. The land must be in agricultural use and should be zoned to an exclusive agricultural zone in a "reasonable period of time."

In addition to general requirements, the County has adopted a set of criteria to insure the proposed reserve is compatible with County planning goals.<sup>19</sup> In reviewing the proposed preserve, the County examines:

1. The character of the surrounding area;
2. Potential for logical urban development;
3. Existing and proposed zoning patterns;
4. Types of crops grown in the proposed preserve;
5. Development proposals near the proposed preserve; and,
6. The policies of the County General Plan.

A key question for decision-makers is the relationship between the preserve and established population centers. If the preserve is located outside of urban area boundaries and otherwise meets aforementioned requirements, the policy



is to approve. If, however, the proposed preserve is within urban area boundaries, the policy is to deny unless:

1. The preserve would not adversely effect the community growth pattern for at least ten years; or,
2. The preserve has special open space or recreation value; or,
3. The contract is consistent with the publicly desireable future use and control of the land in question.

When preserves are approved in urban area boundaries, the agreements are reviewed every five years. If it is found that the preserve has negatively effected community growth, the Board files a "Notice of Non-Renewal."

Once the preserve has been approved by the County Board, the Planning Staff prepares a contract and sends it to the landowner. Once signed and returned, the contract is scheduled for a final hearing by the Board. If approved, the modified tax assessment begins in the next fiscal year.

Although the Act was passed in 1965, it wasn't until 1967--after property tax assessment practices had been clarified--that any significant amount of Tulare's acreage was under contract. In 1967, 92,003 acres were under contract.<sup>20</sup> In the years to follow, landowners saw the obvious tax advantages and entered into agreements so that by 1971, 683,568 acres were under contract. By 1975 (See Table 10-2) 945,520 acres were in preserves and by 1979 the total land in preserves had jumped over the million acre mark to 1,071,518.

The 1,071,518 acres represent roughly 34% of total land in Tulare and nearly 70% of non-State/Federal land. This includes the majority of lands in both the valley floor area and the foothill region (See Figure 10-3). While some lands are still in preserves inside of urban area boundaries, well over 95% of the preserve lands are outside these boundaries. Tiny pockets of preserves are established in small areas of lands in private ownership within the Inyo and Sequoia National Forests.

In the evolution of the Tulare County program, the Williamson Act provided a fiscal incentive which proved



TABLE 10-2

## AGRICULTURAL PRESERVES WITHIN TULARE COUNTY

<u>Fiscal Year</u>	<u>Total No. of Parcels in Ag. Pres.</u>	<u>Current Assessed Value of Parcels (\$)</u>	<u>Total Acres of Prime Land*</u>	<u>Total Other Prime Land</u>	<u>Total Open Space Land**</u>	<u>Total Acres in Agricul. Preserves</u>
1974-75	9,083	64,137,301	168,224	206.099	471,197	945,520
1975-76	9,346	61,080,610	158,555	310,558	503,956	973,069
1976-77	9,764	69,579,963	191,541	292,569	529,302	1,004,412
1977-78	10,353	74,660,346	47,158***	451,599	555,022	1,053,779
1978-79	10,737	72,549,839	47,410	473,179	550 928	1,071,518

\*Land near cities

\*\*Land of Statewide Significance

\*\*\*Reduced figure due to boundary change. Lands taken out of County Jurisdiction by Cities.

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Source: Tulare County, California, Planning Department, The Agricultural Preserve Program as Implemented in Tulare County 1979-80, Tulare County Board of Supervisors, Visalia, California, 1980, Page 3.

FIGURE 10-3

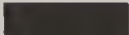





FIGURE 10-3

## WILLIAMSON ACT

## TULARE COUNTY

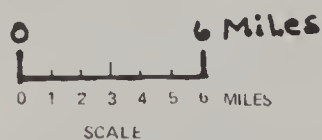
### LEGEND

-  AGRICULTURAL PRESERVE AREAS
-  URBAN AREA BOUNOARY
-  THREE RIVERS COMMUNITY SERVICES DISTRICT BOUNOARY
-  FOOTHILL GROWTH MANAGEMENT REGION BOUNOARY

THIS MAP WAS PREPARED WITH A COMPREHENSIVE PLANNING ASSISTANCE GRANT FROM THE U. S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT UNDER THE PROVISIONS OF SECTION 701 OF THE HOUSING ACT OF 1959 AS AMENDED (CPA/1008.121), AS ADMINISTERED BY THE CALIFORNIA STATE DEPARTMENT OF PLANNING AND RESEARCH.

SOURCE: TULARE COUNTY PLANNING DEPARTMENT  
BASE MAP MODIFIED FROM U.S.G.S., 1:250,000 MAP.

CONTENT: LANDS WHICH ARE IN AGRICULTURAL PRESERVES RELATED TO THE WILLIAMSON ACT LAND CONSERVATION PROGRAM IN CALIFORNIA.



PREPARED BY TULARE COUNTY PLANNING DEPARTMENT  
MARCH 1977



attractive to farmland owners. But the Act also highlighted the public interest in protecting farmland and, (through the general requirements) encouraged Counties to use their planning and zoning powers to protect farmland.

### General Plan

California mandates the preparation of a general plan which must contain a series of specified elements. The zoning ordinance, in turn, must conform to the general plan and all of the elements thereof. This makes the general plan a powerful planning device.

The Tulare General Plan contains the following mandatory elements: (1) Land Use; (2) Circulation; (3) Open Space; (4) Housing; (5) Recreation; (6) Safety; (7) Seismic Safety; (8) Noise; and (9) Scenic Highways. In addition, Tulare has adopted an Environmental Resources Management Element, a Water and Liquid Waste Management Element, an Urban Boundaries Element, a Rural Valley Lands Plan, and, a Plan for the Foothills (in process). Of these elements, the Environmental Resources Management, Urban Boundaries, Rural Valley Lands Plan and the Plan for the Foothills are particularly important for the maintenance of agricultural lands.

In June, 1972 the County adopted Vol 1 of the Environmental Resources Management Element (ERME).<sup>21</sup> In this element the need for an agricultural land use policy and the need for additional soils information received specific emphasis.<sup>22</sup> In addition, the element also set forth a plan for open space that identified areas for future urban expansion, areas of extensive agriculture (low production value per acre), such as tree crops and areas of intensive agriculture (high production value per acre) such as vineyards, orchards, and horticulture.<sup>23</sup>

Following the publication of the plan for open space, the County embarked on the preparation of a special ERME volume on soils (March 1974).<sup>24</sup> This was the first in-depth examination of the properties and uses of soils in Tulare County. This volume contained the necessary soils inventory and set the principal policy tone for the County that appears again and again in later elements and regulatory devices, "Areas classified as prime agricultural land should be preserved for agricultural use..."<sup>25</sup>

Animal Waste Management, which was a further volume of ERME, dealt with issues in mass production of animals and poultry (August 1974).<sup>26</sup> In particular, this volume developed a special use permit system to govern the location

and operation of dairies, feedlots, and swine and poultry raising operations. A key feature of the volume was that the policy recommendations were designed to protect both agricultural operations and adjoining uses. This followed the general policy flavor of previous elements and set a regulatory style which was later reflected in the zoning ordinance.

The Urban Boundaries Element to the General Plan followed the previous work on animal waste, soils, and open space (December 1974).<sup>27</sup> This element defined the agricultural/urban interface by establishing growth boundaries around both incorporated and unincorporated population centers. The boundaries were set at two levels: (1) Urban Area Boundaries to set ultimate growth limits for the population centers; and, (2) Urban Improvement Areas established within the Urban Area Boundaries to contain new urban development for a period of 20 years. Within the Urban Improvement Area full urban development standards are required--curbs, gutters, sidewalks, central water and sewer, etc.

Once the urban area boundaries were set, the remaining areas outside of the boundaries were designated for long term agricultural use. Indeed, the preservation of the agricultural economic base was one of the key goals of the element.<sup>28</sup> The boundaries were reinforced through the adoption of compatible zoning and subdivision regulations as well as plans for water, sewer, and land use. The Williamson Act, discussed later, also played an important role in putting the element to work.

In late 1975, the County adopted the Rural Valley Lands Plan (RVLP) as an amendment to the Land Use Element of the General Plan.<sup>29</sup> The RVLP was prepared to cover the County's best agricultural land located in the valley floor area on Tulare's western boundary. The principal goal of the plan was to "sustain the viability of... agriculture by restraining division and use of land which is harmful to continued agricultural use."<sup>30</sup>

The RVLP also recognized that non-agricultural districts would be required in rural areas. Residential, commercial and industrial districts were provided for those areas which were not well suited to agriculture or which were currently in non-agricultural uses. In order to protect the integrity of the zoning system, the RVLP set up a rigorous evaluative system which would be applied to consider any zone change from exclusive



agricultural to a non-agricultural district.

The evaluation system, called the Parcel Evaluation Checklist, contains fifteen questions pertaining to the parcel under consideration as well as to surrounding land uses. When the questions are answered, a point total is assigned to the parcel. The higher the point total, the better suited the land is for agriculture. The lower the point total, the better suited the land is to non-agricultural uses, but the use permitted must still be compatible with surrounding agricultural land uses.

The evaluation system is arranged around three major categories: (1) Restricted to Agricultural Values; (2) Variable Point Values; and, (3) Fixed Point Values. The evaluation begins with two criteria defining lands which would be restricted to agricultural use: (1) Is the parcel in an agricultural preserve?; and, (2) Do the soils on the parcel limit individual waste disposal systems? If the answer to either question is "yes," a zoning change will not be granted. If the answer to both questions is "no," the parcel is given an "o" rating and additional criteria are applied.

The second major category of variable point value deals only with SCS land capability ratings for the parcel. If the land capability rating is Class I or II, four points are assigned; Class III gets three points; Class IV gets two; and, all other classes get no points. (Remember the lower the score, the less suited the parcel for agriculture.).

The final category, fixed point values, is split into four sub-categories--four point values, three point values, two point values, and one point values. In any sub-category, the site is given the maximum points or none at all. The four point value category deals with existing parcel size and suitability for cultivation. If the parcel is five acres or larger, four points are given. If less than five acres, no points are assigned. If the parcel is being or has been used for commercial agriculture and is otherwise suited to cultivation, (no inherent soil limitations) four points are given. If not, no points are assigned.

The three point value category centers on surrounding parcel size, land use, and proximity to dairies, feedlots, concentrated animal raising operations, and sand and gravel operations. If, within 1,320 feet of the perimeter of the site, more than 35 percent of lands are in parcels smaller than five acres, no points are assigned. If the reverse holds, three points are given.



On surrounding land use, the key question is the extent to which the site is subject to non-agricultural uses. No points are given if the site is abutted on four sides with non-agricultural uses. Short of a four-side abutment, the decision rests on two conditions: (1) Number of site sides abutting non-agricultural uses, and, (2) Percent of land within 1,320 feet of the perimeter of the site in non-agricultural use. The following table shows the four remaining tests.

TABLE 10-3

## SURROUNDING LAND USE TESTS

<u>Site Sides Abutting Non- Agricultural Uses</u>	<u>Percent of Area Within 1,320 feet of Perimeter of Site in Non-Agricultural Use</u>
None	35%
1	25%
2	20%
3	15%

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Source: Tulare County, California, Planning Department,  
Rural Valley Lands Plan, Parcel Evacuation  
Checklist.

If any of these surrounding land use tests are met, no points are given. If the tests are not met, three points are assigned.

The final test in the three point, fixed value, category deals with the question of proximity to feedlots, concentrated animal raising operations, and sand and gravel operations. If the site is within one-half mile of any of the above operations three points are assigned. If not, no points are given.

In the two point, fixed value category, the tests deal with the level of groundwater and soil permeability as well as proximity to lands within agricultural preserves. If the site has highly permeable soil and a water table within 20 feet of the surface, two points are assigned. If either or both conditions are lacking, no points are given.

In dealing with the questions of proximity to agricultural preserves, two points are assigned if the site meets one of the five proximity tests: (1) The site is abutted on four sides with lands in agricultural preserves; (2) The site does not abut agricultural preserves, but 65% of the land within 1,320 feet of the site perimeter is in preserves; (3) One side of the site abuts preserves and 50% or more of the land within 1,320 feet of the site perimeter is in preserves; (4) Two sides of the site abut preserves and 35% of lands within 1,320 feet of the site perimeter are in preserves; and, (5) Three sides of the site abut preserves and 20% of lands within 1,320 feet of the site perimeter are in agricultural preserves. If the site does not meet one of these five tests, no points are assigned.

The one-point, fixed value category centers on five conditions: (1) Proximity to fire protection facilities; (2) Access to a paved county or state road; (3) Historical, archaeological, wildlife habitat and unique natural features; (4) Flood prone areas; and, (5) Availability of community domestic water supply. If the site is not within five miles of a fire station, one point is assigned. If the site does not have direct access to a paved road, one point is assigned. If any unique historic, archaeologic, wildlife habitat, or natural features are on the site, one point is given. If the site is within the 100 year floodplain, one point is given. If the site does not have a central community potable water supply, one point is given.

If the site passes the first two tests (Agricultural Preserve status and limitations on individual waste disposal systems), the judgement of the decision-makers rests principally on the point totals given the parcel under consideration. The maximum number of points is 30; the minimum is zero. Parcels receiving 20+ points are generally denied a re-zoning. From 16-20, decisions are discretionary. When a parcel receives 15 or fewer points, the re-zoning is generally granted.

### Zoning Ordinance

The work on the Williamson Act, the various elements to the General Plan, and the Rural Valley Lands Plan set the stage for the adoption of a zoning ordinance giving special protection to agricultural lands. In 1975, the ordinance was adopted.<sup>32</sup> It included five residential districts with a minimum lot area per family ranging from 12,500 square feet in a single family district to 600 square feet per family in a multi-family district. The ordinance also set forth commercial and industrial districts as well as floodplain, scenic corridor, and timber preserve districts.

Five agricultural districts, covering 675,100 acres, were established (See Table 10-4). These districts govern lands in the valley floor area and cover roughly half of all land within the county's jurisdiction. Most of the remaining acreage is in the foothill region.

TABLE 10-4

## TULARE COUNTY, CALIFORNIA AGRICULTURAL ZONES

<u>District</u>	<u>Minimum Lot Size</u>	<u>Acres in District</u>
AE	5 acres	3,200
AE-10	10 acres	30,720
AE-20	20 acres	214,280
AE-40	40 acres	383,400
AE-80	80 acres	43,500

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Source: Tulare County, California Planning Department

The first of these was the "AE" Exclusive Agriculture Zone.<sup>33</sup> The "AE" Exclusive Agriculture Zone covers 3,200 acres. This zone was to be applied to rural areas which "are generally characterized by extensive or intensive agricultural uses of land."<sup>34</sup> Minimum Lot size is five acres.

The list of permitted uses include:

1. The growing and harvesting of field crops, fruit and nut trees, vines, vegetables, horticultural specialties and timber.
2. The operation of apiaries.
3. The operation of a dairy so long as no more than twenty-five (25) cows are on the property at any time. A dairy with more than twenty-five (25) cows requires a Special Use Permit.
4. The raising and slaughter of poultry, rabbits and other furbearing animals, except when a Use Permit is required.
5. The raising and slaughter of sheep, goats, horses, mules, swine, bovine animals, and other similar domesticated quadrupeds, except when a Use Permit is required.
6. Feed lot for twenty-five (25) animals or less.



7. Agricultural service establishments primarily engaged in performing agricultural animal husbandry services or horticultural services to farmers.
8. Services to farmers or farm-related activities in planting, harvesting, storage, hauling and equipment repair and maintenance.
9. Incidental and accessory structures and uses including barns, stables, coops, tank houses, storage tanks, wind machines, windmills, silos and other farm buildings, private garages and carports, guest houses, store-houses, garden structures, greenhouses, recreation rooms, and the storage and use of petroleum products.
10. Mobilehomes and residences for the owners and lessees of the property and for housing farm employees who work on the property.
11. One (1) single-family residence or mobilehome for persons other than those mentioned in paragraph 10 above for each two and one-half ( $2\frac{1}{2}$ ) acres in the entire property. If a lot has less than two and one-half ( $2\frac{1}{2}$ ) acres and was of record at the time this zone becomes applicable to the property, one (1) single-family residence or mobilehome for persons other than those mentioned in paragraph 10 above may be constructed.
12. Plant nurseries.
13. (Repealed)
14. Sales of agricultural products, including sale at roadside stands, if more than one-half ( $\frac{1}{2}$ ) of the value of the products on hand for sale at any time has been produced on the property where the sale is conducted or other property owned by the same person.
15. Signs which pertain only to a permitted use on the property on which the sign is situated or which pertain to the sale, lease or rental of the property or a structure or personal property located on the property.

16. Temporary landing of helicopters engaged in agricultural uses.
17. The curing, processing, packaging, packing, storage and shipping of agricultural products.

Conditional uses include:

1. Cotton gin or oil mill.
2. (Repealed)
3. Feed lot for more than twenty-five (25) animals.
4. Feed mill with more than a combined total of one hundred and seventy-five (175) horsepower in all motors used.
5. Fertilizer manufacturing.
6. Hay dehydrator.
7. Olive processing plant.
8. Raising or slaughter of poultry when a total of more than one thousand (1000) poultry are on the property at any time.
9. Raising or slaughter of rabbits or other fur-bearing animals when a total of more than one thousand (1000) rabbits and/or other furbearing animals are on the property at any time.
10. Raising or slaughter of swine when a total of more than twenty-five (25) swine are on the property at any time, excluding swine which have not yet been weaned.
11. Roadside stands which do not constitute an allowed use.
12. Seed cleaning plant.
13. Sewage treatment plant and disposal area.
14. Slaughter house for slaughter of bovine animals, sheep, goats, swine or other similar domesticated quadrupeds.
15. Stockyard.

16. Tannery.

17. Winery.

The ordinance standards governing the issuance of a conditional use are general and do not deal directly with agricultural issues. According to the ordinance, "A Special Use Permit (conditional use) shall be granted only if it is found that the establishment, maintenance, and operation of the use of building or land applied for will not, under the circumstances of the particular case, be detrimental to the health, safety, ..... morals, comfort and general welfare of persons residing or working in the neighborhood or to the general welfare of the County. Special Use Permits may be granted subject to such conditions as will insure compliance with the aforementioned standards."

"AE-10" Exclusive Agricultural Zone: Covering 30,720 Acres

This zone has multiple purposes:<sup>35</sup>

1. To protect the general welfare of the agricultural community from encroachments of unrelated uses which, by their nature, would be injurious to the physical and economic well-being of the agricultural community and the community at large.
2. To prevent or minimize the negative interaction between various agricultural uses.
3. To prevent or minimize land use conflicts or injury to the physical or economic well-being of urban, suburban, or other non-agricultural uses by agricultural uses.
4. To disburse intensive animal agricultural uses in order to avoid air, water, or land pollution otherwise resulting from compact distributions of such uses.
5. To provide for a minimum parcel standard which is appropriate for areas where soil capability and cropping characteristics are such that a breakdown of land into units of less than ten (10) acres would adversely effect the physical and economic well-being of the agricultural community and the community at large.
6. To function as a holding zone within Urban Area Boundaries as designated by the General Plan



whereby land may be retained in agricultural use until such time as conditions warrant conversion of such land to urban use.

The minimum parcel size is ten acres.

The list of permitted uses include:

1. One (1) single family residence or mobilehome for the entire contiguous property owned by one (1) person, firm, partnership or corporation or owned jointly by more than one (1) person, firm, partnership or corporation or any combination thereof. Such residence or mobilehome shall be occupied only by an owner of the property and his family or a lessee of the property and his family.
2. In addition to the residence allowed under paragraph 1 above, one (1) additional residence or mobilehome for each ten (10) acres in the entire property. Such additional residences and mobilehomes shall be occupied only by relatives of the owner or lessee or by employees who work on the property. However, if the property is less than ten (10) acres in area and was of record at the time this zone became applicable to the property, one (1) such residence or mobilehome may be constructed and used as a dwelling by the persons designated hereinabove. In addition to the number of residences and mobilehomes allowed under this paragraph, additional residences and mobilehomes for use by such relatives and employees may be allowed under the Use Permit procedures...
3. Incidental and accessory structures and uses including barns, stables, coops, tank houses, storage tanks, wind machines, windmills, silos and other farm buildings, private garages and carports, storehouses, garden structures, greenhouses, recreation rooms, and storage and use of petroleum products.
4. The growing and harvesting of fruit and nut trees, vines, vegetables, horticultural specialties and timber, excluding the growing of mushrooms.
5. The growing and harvesting of field crops, grain and hay crops, and the growing of grass for pasture and grazing.

6. The raising and slaughter of poultry up to a maximum of three (3) birds for each 1,300 square feet in the entire property, and not to exceed a total of one hundred (100) birds in all, unless a Use Permit has been secured..
7. The raising and slaughter of rabbits and other similar furbearing animals. The maximum number of mature animals allowed on any parcel shall not exceed sixty (60) unless a Use Permit has been secured. Any offspring of the animals allowed under this paragraph may remain on the property until they reach the normal age for weaning.
8. The raising of sheep, goats, horses, mules, swine, bovine animals, and other similar domesticated quadrupeds. The total number of such animals shall not exceed two (2) mature animals for each acre in the entire property, unless a Use Permit has been secured as required... Any offspring of the animals allowed under this paragraph may remain until they reach the normal age for weaning. However, no feed lot or area for concentrated feeding of more than 25 animals may be permitted.
9. Fish farming operations for the raising and harvesting of fish as a crop, but not including fishing clubs or fishing for the general public on a commercial basis unless a Use Permit has been secured as required...
10. Game preserve, private or public, but not including hunting clubs or hunting for members of the public on a commercial basis unless a Use Permit has been secured as required..
11. Agricultural service establishments primarily engaged in performing agricultural animal husbandry services or horticultural services to farmers.
12. Services to farmers or farm-related activities in planting, harvesting, storage, hauling and equipment repair and maintenance.
13. Plant nursery.
14. Sale of agricultural products, including sale at roadside stands, if more than one-half ( $\frac{1}{2}$ ) of the retail value of the agricultural products offered for sale at any time has been produced on the property where the sale is conducted or on

other property owned by the same person.

15. Signs which pertain only to a permitted use on the property on which the sign is situated or which pertain to the sale, lease or rental of the property or a structure or personal property located on the property. In addition, signs which are no larger than four (4) square feet in area and which pertain to producer and marketing associations and organizations with which the owner or lessee is affiliated are allowed.
16. Temporary landing of aircraft engaged in agricultural uses.
17. The curing, processing, packaging, packing, storage and shipping of agricultural products except those particular operations, uses and structures which require Use Permits.
18. Open space uses including, but not limited to a scenic highway corridor, wildlife habitat area, saltpond, managed wetland area or a submerged area, as defined as agricultural land by the Land Conservation Act of 1965, as amended.

Conditional uses include:

1. Agricultural chemicals; storage, handling, and manufacturing.
2. Apiary and honey extraction plant.
3. Hunting and fishing clubs and hunting and fishing on a commercial basis for members of the general public.
4. Kennels.
5. Raising or slaughter of poultry when more than three birds for each 1,300 square feet in the entire property, or more than a total of 100 birds in all are on the property at any time.
6. Raising and slaughter of rabbits and other similar furbearing animals. A Use Permit is required for more than sixty mature animals on one parcel.
7. The raising of sheep, goats, horses, mules, bovine animals, swine, and other similar



domesticated quadrupeds when no more than two mature animals for each acre in the entire property are on the property at any time, excluding feed lots or areas for concentrated feeding of more than 25 animals.

8. Residences or mobile homes in excess of those allowed in (item 2 of permitted uses).
9. Sale of agricultural products, including sale at roadside stands, which does not constitute a (permitted use).
10. Seed cleaning and treating plant.
11. Sewage treatment plant and disposal area.
12. Similar uses when determined (according to this ordinance).

Conditional uses are evaluated in accordance with the same criteria used in the "AE" Exclusive Agricultural District.

"AE-20" Exclusive Agricultural Zone: Covering 214,280 acres.

The AE-20 Zone is for intensive agricultural uses and for uses which are a necessary part of the agricultural operation.<sup>36</sup> The purpose of this zone is "to protect the general welfare of the agricultural community from encroachments of unrelated agricultural uses which, by their nature would be injurious to the physical and economic well-being of the agricultural community. It is also to prevent or to minimize the negative interaction between various agricultural uses. A related purpose...is to disperse intensive animal agricultural uses to avoid air, water, or land pollution otherwise resulting from compact distributions of such uses." The minimum parcel size is twenty (20) acres.

The permitted uses are the same as those in the "AE-10" District. Conditional uses are similar to those in the "AE-10" District except that "AE-20" also identifies:

1. Agricultural dehydrator with more than a combined total of one hundred horsepower in all motors used.
2. Cotton Gin and oil mill.

3. Feedlots for more than 25 animals.
4. Feed mill with more than a combined total of one-hundred and seventy-five horsepower in all motors used.
5. Fertilizer manufacturing.
6. Mushroom growing
7. Slaughter house
8. Winery

The evaluative criteria follow those of the "AE" District.

"AE-40" Exclusive Agricultural District. Covering 383,400 acres.

District purposes include all of those for the AE-20" zone and add the following:

1. "To provide for a minimum parcel standard which is appropriate for areas where soil capability and cropping characteristics are such that a breakdown of land into units of less than forty acres would adversely affect the physical and economic well-being of the agricultural community and the community at large."<sup>37</sup>
2. "To function as a holding zone within Urban Area Boundaries as designated by the General Plan whereby land may be retained in agricultural use until such time as conditions warrant conversion of such land to urban use."<sup>38</sup>

The minimum parcel size is forty (40) acres.

Permitted uses are the same as those in "AE-20" except that up to 500 birds may be raised or slaughtered (versus 100 in AE-20) and that 120 rabbits or furbearing animals (versus 60 in AE-20) may be raised or slaughtered.

Conditional uses include all of those in "AE-20" and add the following:

1. Asphalt manufacturing and refining.

2. Brick site and terra cotta manufacturing
3. Concrete products manufacturing
4. Fish smoking, curing, and canning
5. Guest ranch and summer camp
6. Olive processing plants
7. Petroleum products: manufacturing and wholesale storage
8. Potash works
9. Quarry and stone mill
10. Rock crusher and distribution of rocks, sand, gravel
11. Saw mill, shingle mill, or box shook mill
12. Raising or slaughter of more than 500 birds or more than 120 rabbits or other furbearing animals.

The criteria used to evaluate conditional uses are those identified earlier.

"AE-80" Exclusive Agricultural District. Covering 43,500 acres

The purpose of this district is the same as that for the "AE-20" zone. The minimum lot size is 80 acres.<sup>39</sup> Permitted uses are the same as those in the "AE-40" zone except that up to 1000 birds (versus 500 in "AE-40") and 240 rabbits or other furbearing animals (versus 120 in "AE-40") may be raised or slaughtered.

The list of conditional uses also follows "AE-40" except that rock crusher and distribution of rocks, sand and gravel and saw mill, shingle mill or box shook mill are not included. The limit on the raising or slaughtering of birds is more than 1000 and the limit on rabbits or furbearing animals is more than 240. The same evaluative criteria apply.

Each of the districts contains exceptions to the required minimum lot size. The exceptions--the same ones are shared by all agricultural districts--are set forth in a section of the ordinance dealing with land divisions. In general



the ordinance provides that no land may be divided for the purpose of sale, lease or financing (note that gift deeds are not covered) if any one parcel resulting from the division contains less than the required minimum lot size. In certain circumstances, however, one parcel may be less than the required minimum.

The minimum lot size exception is established for any conveyance made by court decree and intestate or testamentary dispositions of land. Similarly, any conveyance to the State or political subdivision thereof is exempt and so is any conveyance or easement of oil, gas, or mineral rights.

Exceptions are also permitted where one parcel is cut off from the parent parcel by a river, railroad, improved public road or canal. Below minimum conveyances may also be made to enable a landowner to acquire the minimum lot size necessary for a residence or to correct errors in property ownership. A person may separate a 12,500 square foot area from his property in order to obtain financing for building a residence. Once divided, the owner may not do it again, but successors in interest may.

A landowner may also separate a residence from a parcel and sell the parcel provided that the residence has been on the property for three years. Or, a person can sell the residence so long as the residence has been on the property for at least ten years. In either case the residence must have a minimum lot size of 12,500 square feet.

#### Informal Methods and Processes

There are a series of informal methods and processes that are used by the County to supplement their planning and regulatory approach. First, the County Planning staff serves as the areawide regional planning agency, placing the County in direct contact with Federal and State departments and agencies. This gives the County added advantage in insuring that their planning goals and objectives will be recognized by other levels of government. If the County were represented by a separate regional planning agency, it would be unlikely that County planning goals and objectives would play such a strong role.

The regional planning role has also assisted the County in their relationship with cities. Unlike many Counties, Tulare has maintained an excellent working relationship with their cities as evidenced by the urban boundaries agreement. This agreement works as much to the advantage of cities as it does to the advantage of the County. Similarly, the County is able to work effectively with cities in working out mutual problems with the protection of agricultural land. In other counties, where frictions develop between the cities and the county, such problems are much more difficult to solve.

Another important aspect of Tulare's planning program is that the planning staff exercises substantial control over the type, timing, and location of new roads, water lines, and sewer lines. In some California counties, these responsibilities are divided up amongst different county departments or special districts. As a result, county policy on roads, water lines and sewer lines often conflict with other county land use policies. Tulare has a clear advantage here in maintaining consistency between key capital improvements and their adopted land use policies.

Finally, the County has established a circuit rider planning program for a number of small, unincorporated population centers. The circuit rider provides a continuing source of planning expertise for developing, small towns. In particular, the circuit rider has worked with citizens of these communities to prepare various plans which meet the needs of the town but which also conform to the County-wide planning goals--including the protection of agricultural land. As these small centers gradually evolve into incorporated places, the new elected officials will be working from a foundation of the County planning effort. This, of course, will not guarantee that the newly incorporated place will follow the County lead, but it does seem to suggest that officials will be strongly influenced by the previous work of the County planning staff.

It is difficult to assess the contribution of these informal methods and processes to the protection of agricultural land. They do not involve contracts with landowners or such things as land use regulations. They do demonstrate, however, the breadth and consistency of the County effort and add weight to more formal protection devices.



## III. FACTORS LEADING TO FARMLAND PROTECTION

Of all the forces at work that eventually led Tulare's Board of Supervisors to adopt planning and zoning measures to protect farming, none was more important or decisive than the simple weight and influence of the agricultural economy. In 1967, when landowners first began signing Williamson contracts in large numbers, total agricultural income was \$364,729,000 and agricultural employment accounted for roughly 24% of total employment.<sup>40</sup> By 1975, when the zoning ordinance was adopted, agricultural income stood at \$714,740,000 and agricultural employment accounted for 21% of total employment--32% of the total when agricultural services are combined with agricultural production.<sup>41</sup> Thus to appreciate what Tulare County did to protect farming, it is important to understand first the County's huge investment in their agricultural base.

Yet it is unlikely that the County Board would have taken action to protect their agricultural base had not they experienced substantial population and economic growth which threatened it. It was in the same period of sustained agricultural production that the County also had steady increases in various non-agricultural sectors. Manufacturing employment went from 7.9% of total employment in 1960 to 10.9% (7,154) in 1970 and to 11.4% in 1976 (9,150).<sup>42</sup> Service employment went from 20.3% in 1960 to 26.1% in 1970.<sup>43</sup> Total employment was 56,923 in 1960; 65,562 in 1970; and 77,150 in 1975.<sup>44</sup>

The employment increase was followed by a population increase which, in turn, led to increased demands for housing. Some of this demand was channeled into rural areas where the County had agricultural zoning with a five acre (or less) minimum lot size. As evidenced by the heavy activity in land divisions, the zoning requirements did little to keep land in agricultural use or to protect farmers from the activities of nearby suburbanities.

In one year, 1973, 273 parcel maps were processed. Each parcel map represented a proposed land division.<sup>45</sup> Of the 273 processed, 232 were approved, representing 85% of those processed.<sup>46</sup> The 232 approved parcel maps contained 534 separate parcels for an average per map of 2.3 parcels.<sup>47</sup> Of the 534 approved parcels, 90 or 17% were inside urban area boundaries.<sup>48</sup> 444 or 83% were located outside urban area boundaries.<sup>49</sup> 67% of the approved parcels were 10 acres or less.<sup>50</sup>



An extrapolation of the 1973 data to all parcel maps approved between 1972 and 1975 gives some indication of the pressure emerging on agricultural land from population and economic growth. In this period, 945 parcel maps were processed.<sup>51</sup> If the 1973 trends held for the period 1972 to 1975: (1) 803 parcel maps were approved (85% x 945 parcels); (2) 1,847 separate parcels were established; (3) 1,533 parcels were located outside urban area boundaries; (4) 1,237 parcels were 10 acres or less.

Parcel split activity was heavily concentrated in the valley floor near major transportation arteries which tied the country's established population centers together. And since minor subdivisions involving four or fewer lots were not governed under county subdivision regulations, there were difficulties with streets, sewage disposal, and conflicts with surrounding land uses, especially agriculture.

Rural subdivision was particularly troublesome to Tulare's "refugee" farmers and ranchers. In particular, dairy operators became especially concerned as many of these operators had moved to Tulare to escape the very urban pressures which were now surfacing in the County. Dairymen and others were quick to point up their earlier experiences and generally wanted some protection.

If the word of the "refugees" was not sufficient, elected officials and planning commissioners had other, more dramatic sources of inspiration. Nearby counties, such as Fresno, had experienced heavy rates of population and of economic growth. The damage to the agricultural sector was evident to anyone driving through the County. Trips to Los Angeles to the south or to San Francisco to the north also provided similar evidence of what happens when premature rural subdivisions lace agricultural areas. Santa Clara County, for example, was once one of the state's premier agricultural counties, but due to high population and economic growth, agricultural capacity had declined dramatically.

Finally, in the early 1970's County officials were influenced by possible state and federal activity. Although no bills had been introduced in the state legislature giving the state exclusive control over farmland, the issue was beginning to get legislative attention. At the same time, congressional consideration of a National Land Use Policy Act also caused local officials some concern. Taken together, the threat of state and federal action gave the County incentive to put their own agricultural house in order.

The County program was strongly shaped and influenced by the Agricultural Advisory Committee. This committee, formed in the late 1960's served (and continues to serve) as an agricultural sounding board and court of common sense for the suggestions and proposed plans and regulations generated by the County Board of Supervisors, the Planning Commission, and the staff.

The advisory committee--appointed by the County Board--reflects most of the key interests of the agricultural community. Although membership floats between 20 and 50 members (there are 21 members at present) careful attention is given to the composition of this group. Currently, for example, the group has four ranchers, seven farmers, four real estate agents, three agricultural service business employees, a dairy inspector, an irrigation district engineer and one retiree.

It is difficult to pin down the precise functions of this committee. County Supervisor Harrell identifies one function, "When we say we're going to formulate a plan, they (the committee) make all the suggestions. They come up with what they feel the ordinance should say. Then, they bring the ordinance back to us, we go over it, and if it doesn't say what we think it should, we send it back. When we both agree, we take it to a public hearing, after first taking it to the planning commission."<sup>52</sup>

Planning Commissioner John Sullivan makes a similar point, "Usually we (the planning commission) work very closely with the advisory committee if we need an area of study or a change in the zoning ordinance. Right now, for example, they are working on the Plan for the Foothills where much of the land is used for grazing."<sup>53</sup>

The work of the advisory committee tends to be both slow and exacting. The Committee, of course, deals with all technical issues pertaining to agriculture, but they also have a refined sense of what is possible and what should be done. Thus the committee has an excellent sense of the political and technical feasibility of various proposed plans and ordinances.

The Committee also serves as a conduit of information to the agricultural community. Gene Smith, Planning Director for Tulare, noted that the committee, or at least some members of it, had taken it upon themselves to explain the farmland protection program to the general public. For example, Farm Bureau members of the committee explained the program to other Farm Bureau members. As

a partial result of this work, the agricultural community feels they have good rapport with the county staff and with elected officials. This establishes a trust which is essential to the success of any preservation program.

It is difficult to overestimate the role or significance of the Advisory Committee. Over the years the Committee has evolved into a powerful planning group whose advice is always sought and often taken. Planning Commissioner John Sullivan summed up one reason for its influence, "It could be because of the make-up of the County Board--the fact that some of them are former farmers. I guess, too, that if they want to be re-elected, they listen to the farmers."<sup>54</sup>

The County program has also been strongly supported by the County Counsel. Gene Smith notes that "the County Counsel's opinion is generally accepted by the Board and that the Counsel has been very supportive of our program."<sup>55</sup> But in addition to the County Counsel, one must also note that Tulare County has had a series of excellent planning directors complemented by a superior staff. The staff has enjoyed an excellent working relationship with the Advisory Committee, the Planning Commission, and the Board of Supervisors. As a result, when the plans and regulations were developed and presented, the decision-makers felt that their suggestions and comments were reflected. At the same time, the planning work retained a level of technical excellence. The result has been a technically superior program anchored in the strong support of elected and appointed officials.



#### IV. EVALUATION

##### Zoning as Applied

In any zoning evaluation it is important to understand the planning framework of the zoning ordinance. Typically, zoning ordinances fall into two broad categories--zoning ordinances growing out of a plan or plans and zoning ordinances adopted without much planning support. These may be termed the 'Plan first, zone later' approach as opposed to the 'Zone first, plan later' approach.

With 'Zone first, plan later' the community is generally faced with a continuous process of ordinance modification. With agricultural zoning, for example, large areas may be zoned agricultural without much planning support. The ordinance is then modified or tailored to local conditions on a case by case basis. Thus under 'Zone first, plan second' one expects a considerable number of requests for zoning changes.

Under 'Plan first, zone later,' the opposite is expected. Given the time and effort put into plan development, the zoning ordinance generally reflects local conditions. As a result, there is little pressure for zoning changes since most of these cases were considered in the planning process.

Tulare County falls under the category of 'Plan first, zone later.' Indeed, since the late 1960's the County has been heavily involved in planning efforts that, several years later, resulted in the current program. For example, the Williamson Act provided the first major program directed specifically at farmland preservation. This was followed by the Urban Boundaries Element, which refined the process further. Finally, the Rural Valley Lands Plan took the general planning effort one step further and the plan for the Foothills is the most recent extension. The current program, then, which is highly refined and uses multiple tools, continues to evolve.

As the County used the "Plan first, zone later" approach, there were few re-zoning petitions filed in the period December 1975 to December 1979. 48 petitions were filed within the area governed by the RVLP.<sup>56</sup> The petitions involved lands in both AE and non-AE districts and all were evaluated under the point system specified

in the RVLP. The point system, ranging from a low of zero to a high of 30, provides decision-makers (the Planning Commission and the Board of Supervisors) with an index of the suitability of the parcel under consideration for agricultural use. High totals indicate the land should be retained in agricultural use, while low totals indicate the land is not well suited to agricultural use. Cut-off points are as follows: (1) 21 or more points and the petition involving a change to a non-agricultural zone would normally be denied; (2) 16-20 points is a zone of discretion for decision-makers--such petitions may be approved or denied; and, (3) petitions receiving 15 or fewer points would normally be approved.

Of the 48 re-zoning petitions, 29 or 60.4% were approved; 7 or 14.5% were denied; 6 or 12.5% were withdrawn; and, as of 5 December 79, 6 or 12.5% were pending. The average RVLP score for the 29 approvals was 10.9 (following the decision-making rules), while the average RVLP score for the 7 denials was 19.12 (also following the decision-making rules).

Of the 48 cases, only three were approved which had received high point totals--21, 22, 23. Two of the three cases involved site conditions such as an existing non-conforming use which was not considered in the point evaluation system. The site conditions were used to justify the approval of the applications in spite of the countervailing high point totals. In the third case, however, staff and planning commissioners and board members describe the outcome as "political." While the point system clearly indicated that the land was best suited to agriculture and in spite of the absence of mitigating site conditions, the Planning Commission and Board approved (narrowly) the application.

Seventeen of the 48 petitions (see Table 10-5) involved parcels in AE Districts where landowners were seeking a zoning change to non-AE Districts. Of the 17, 6 or 35.2% were approved; 3 or 17.6% were denied; 5 or 29.4% were withdrawn; and, 3 or 17.6% percent were pending. The approvals covered 106.52 acres, while denials included 49.30 acres. The average RVLP score for petitions approved was 13.6 while the average RVLP score for petitions denied was 17.6. Once again, decision-makers followed the guides set forth in the RVLP.

TABLE 10-5

SUMMARY DATA: PETITIONS INVOLVING CHANGE  
FROM AE TO LESS RESTRICTIVE DISTRICT

<u>Total Cases</u>	<u>Percent</u>	<u>Acres</u>	<u>Average RVLP Points</u>
Approved 6	35.2	106.52	13.6
Denied 3	17.6	49.30	17.6
Withdrawn 5	29.4		
Pending 3	<u>17.6</u>		
	100.0		

Source: Tulare County, California Planning Department

The high rate of petition approval, while conforming to the decision-making guidelines set forth in the RVLP, is misleading. Many petitions and perhaps most, never reach the Planning Commission--the first step in the re-zoning process. The reason is because the staff uses the RVLP point system in evaluating the parcels of potential petitioners. These informal evaluations are conducted by the staff to show potential petitioners the likelihood of having their petitions approved. When point totals rise above 20, petitioners are advised that they stand little chance of having the re-zoning approved. Thus, the high rate of petition approval is mis-leading since no account is made of the petitions which might have been filed had not petitioners received the staff's informal evaluation.

The RVLP point system has proved to be an excellent aid to the re-zoning process and has lent great credibility and consistency to re-zoning decisions. Petitioners see that the main decision-making criteria are spelled out in the system--there is little room for hidden decision-making rules. Planning staff find it useful in giving accurate if informal assessments to potential petitioners. The Planning Commission and the Board of Supervisors follow the system, making their decisions on the basis of point totals. The re-zoning decisions are based on findings of fact that are spelled out in the point rating form. Finally, since the point system was developed as part of the RVLP, decisions based on the system maintain consistency between the RVLP and the zoning ordinance.

Although the County officials have a good record in treating re-zonings, they have experienced difficulty with exceptions to the zoning ordinance minimum lot size which encourages parcel splits down to the effective



minimum. In two AE districts, AE at a five acre minimum and AE 10 at a ten acre minimum, the County has discovered that some of the larger parcels are being divided in a process known as "four by fouring." In a four by four, a large parcel, say of 80 acres, is divided into four 20 acre parcels. The four 20 acre parcels are further divided into four 5 acre parcels, meeting the zoning minimum, but clearly violating the spirit of the relevant exclusive agricultural zone. So long as four or fewer parcels are involved, they are exempt from subdivision regulation.

The County is also troubled by land division exemptions to the zoning ordinance. There are three exemptions which have proved troublesome. First, the land division regulations established that no land may be divided for the purpose of sale, lease or financing, if the resulting parcels fall below the requisite minimum lot size. Until recently, this provision permitted gift deeds, or land division by gift deed, since the purpose of this division was not to sell, lease, or finance the land. Gift deeds then were exempt from the land division requirements.

Second, the land division regulations permitted a parcel split resulting in one parcel falling below the zoning minimum when a person sells his property but retains the residence (commonly called a homestead exemption). Any landowner in the agricultural districts could sell the land and keep the residence so long as the residence (not the owner) had been on the property for three years. Thus, once a house was established on a property for three years, a landowner could begin a parcel split so long as the resulting residential parcel did not fall below a 12,500 sq ft minimum.

Third, the land divisions permitted a homeowner to sell a residence, separating it from the larger parcel, so long as the residence had been on the property for ten years (also referred to as a homestead exemption). Once the residence was sold, the landowner could then build a new residence.

These three exemptions, plus the four by fouring, have proved difficult for the County. The criteria for land divisions in Tulare County are fairly straight-forward, easily applied, and easily understood. But while the regulations are straight-forward, they also open the door to serious abuse. All of the exemptions were initially designed to deal with the day to day requirements of landowning farmers, but they soon came to serve differing interests of people who saw the exemptions

as one way to beat the rigorous zoning requirements.

Parcel splits involving lands governed under Williamson contracts have been particularly troublesome. Before 1970 there was no minimum parcel size requirement for lands under the Uniform Rules of the Williamson Act. Similarly, there was no minimum lot size specified in the zoning ordinance for agricultural lands. In 1970, however, the County Board set a minimum parcel size for lands under Williamson contracts at five acres. In 1973, the County Board set a five acre minimum lot size for lands in the agricultural district thereby gaining consistency between uniform rules and the zoning ordinance.<sup>56</sup> In 1975 the County Board adopted the first AE Districts and subsequently changed the minimum lot size for Williamson parcels (those under contract) to that of the relevant zoning district, again in an effort to maintain consistency between zoning and the Uniform Rules. In most cases, this meant that the minimum parcel size for contracted land would be that specified in the AE District--AE, AE-10, AE-20, AE-40, or AE-80.<sup>57</sup>

There were, however, two problems. First, many of the parcels were initially contracted when the minimum parcel size under the Uniform Rules was five acres or less. These parcels were not affected by the Board's change in minimum parcel size. Second, even when parcels were governed under the new rules of the AE Districts, landowners continued to use gift deeds, four by fouring, and the homestead exemptions to circumvent the minimum lot size requirement. As a result, some contracted parcels were less than the required minimum parcel size as specified in the ordinance and some of the parcels were not in agricultural or other uses intended by the Act.

It is difficult to estimate the numbers of non-conforming parcels (parcels below the minimum lot size set in the Uniform Rules for Williamson Act lands) that can be traced to gift deeds, homestead exemptions, and four by fouring. Similarly, little information is available on the number of parcels in the County under Williamson contract that fall below the minimum of the relevant zoning district--those parcels put under contract when the Uniform Rules specified five acres or less. Four by fouring was a much more common problem before the County Board adopted the increased minimum lot sizes found in most AE Districts. Once the Board placed 671,900 acres in either AE-10, AE-20, AE-40 or AE-80, parcel splitting from four by fouring diminished as the effective minimum lot size increased. This left 3,200 acres in the AE District with its 5 acre minimum lot size and four by fouring continued here. For the most



part, however, the increased minimum lot sizes tied to the uniform Williamson Act rules greatly decreased four by fouring for contracted and non-contracted lands.

Gift deeds, however, were another matter.<sup>58</sup> From 1974 through June 1980, gift deeds resulted in at least 92 parcels which fell below five acres and an additional 50 which fell below the requirements of the relevant minimum parcel size for the district.<sup>59</sup> Thus, the gift deed process resulted in at least 142 non-conforming lots, each of which is entitled to a building permit. And because gift deeds were, until very recently, exempt from the land division process, the total number of lots created is difficult to identify--the County Recorder made no distinction between gift deeds and other types of deeds.

Considerable activity also occurred with the two remaining homestead exemptions--sell the land and keep the residence, sell the residence and keep the land. Between 1975 and June 1980, 2,548 parcel maps were filed in the County. Of the 2,548 parcel maps, staff estimates that 12% or 306 involved the two exceptions.<sup>60</sup>

The rate of approval for parcel maps is also high as one would expect with the clearly defined exceptions. In 1979, for example, out of 289 cases involving proposed splits in agricultural areas, 274 or 94% were approved and 9 were denied while 6 were withdrawn.

For the six year period, then, the exemption process permitted at least 612 potential building permits while the gift deed process permitted at least another 142 non-conforming lots. This produces an annual average of 125 potential building sites.

Tulare's Agricultural Advisory Committee, to their credit, has kept close tabs on the workings of the Williamson Act, the agricultural zoning ordinance, and the regulation of land division. In a recent report to the County Board of Supervisors, the Advisory Committee noted, "...the viability of Tulare County agriculture can be sustained only by restraining subdivision and use of land which is harmful to continued agricultural use. One of (our) objectives is to "discourage the conversion or division of agricultural lands to non-agricultural uses and parcel sizes." Upon intensive review of the land division activity in agricultural areas since the implementation of (our plan), it is this Committee's belief that this objective has not, in all cases, been achieved. Division of agricultural lands below the minimum parcel size requirements and below the unit size generally recognized as



necessary to sustain a commercial agricultural operation continues to occur in agricultural areas."<sup>61</sup>

In the report to the County Board, the Advisory Committee recommended the following changes to the land division regulations:

a. On Gift Deeds: Change the regulation to read, "No such land may be divided for the purpose of sale, lease, financing, gift or any other purpose...if any one parcel resulting from the division contains less than (the minimum lot size)..."<sup>62</sup> The committee also tightened the definition of a gift recipient to include parents, children or grandchildren who are related to the owner by adoption, blood or marriage. Finally, if the resultant parcel is less than the required minimum lot size the applicant is required to obtain a conditional use permit in order for the parcel split to be approved.

b. On the Homestead Exemption: The Committee recommended that minimum and maximum lot sizes, 12,500 sq ft and 50,000 sq ft respectively, be established for the residential area which remains after the parcel split. Further, once a parcel is split, the parcel containing the residence may not be split again unless a conditional use permit is obtained.<sup>63</sup>

c. On Four by Fouring: The committee recommended that once a parcel has been divided (four by four), no further subdivision of the property would be permitted for a minimum of five years from the date on which the first subdivision was approved.<sup>64</sup>

The Advisory Committee recommended to the Board that all Williamson Act lands within the RVLP area be zoned to at least AE-20 with its 20 acre minimum lot size. Contracted lands in the Foothill Region should be zoned to AE-80. Further, the Advisory Committee recommended that the County file Notices of Non-Renewal for all contracted properties not meeting the purposes of the Williamson Act. This includes all properties in contiguous ownership of five acres or less and all properties whose use of land is unrelated to commercial agriculture, recreation, or open space.<sup>65</sup>

The Committee also recommended that the Parcel Map Committee, charged with overseeing the land division process, file Notices of Non-renewal in conjunction with tentative parcel maps showing one or more parcels containing

five acres or less or parcels which would be converted to a use not specified in the uniform rules (commercial agriculture, recreation, or open space). Applicants for building permits on contracted land would also be required to file Notices of Non-Renewal if the five acre rule were violated or the land would be converted to a use not specified in the Uniform Rules. The Planning Director and the Building Engineer were directed under the recommendation to withhold a building permit or occupancy permit until such notices were filed. Finally, the recommendation directed the Assessor to monitor property transactions for contracted properties to identify those parcels of five acres or less and those whose use of land were unrelated to commercial agriculture, recreation, or open space. The Assessor would be required to report these parcels to the Board annually so that Notices of Non-renewal could be filed.<sup>66</sup>

These recommendations, if adopted by the County Board, will tighten up the land division regulatory process. Current activities in gift deeds, homestead exemptions, and four by fouring will be curtailed, not eliminated. The Committee obviously is anxious to retain some flexibility for the farmer/landowner, but they are equally anxious to eliminate the excesses permitted under the regulations.

To keep Tulare County's land divisions in perspective, it is important to note that the 125 annual potential building sites produced by the land division process represent a small fraction of land demand in the County. Thus, the land division process has partially undermined Tulare's agricultural land protection program, but the County is now beginning to consider changes to the process which would bring the land division process closer in line with the performance of the agricultural zones.

#### Urban Boundary Agreement

The Urban Boundary Agreement is as central to agricultural preservation as is the zoning ordinance or the Williamson Act. The Boundary Agreement, between the County and all 26 incorporated and unincorporated population centers, defined urban improvement areas as well as ultimate growth boundaries. Urban improvement areas were those lands scheduled for development and/or annexation in a twenty year period.

The agreement between the County and the City of Visalia is illustrative. Visalia is the County's major



population and employment center. Visalia's 1978 estimated population of 45,050 was 20% of Tulare's estimated 1978 population.<sup>67</sup> Between 1972 and 1978, Visalia captured: (1) 40% of all new residential building activity in the County; (2) Between 41% and 44% of total County retail sales; (3) 80% of total County office space demand; and (4) 25% of total County industrial employment.<sup>68</sup> Since 1960, Visalia has had substantial population growth, going from 15,791 in 1960 to 27,462 in 1970 and to an estimated 45,050 (an increase of 49.4%) in 1978.<sup>69</sup> Current population growth projections for the city show the 1990 population falling between a low of 74,600 and a high of 82,555.<sup>70</sup>

In 1974, Tulare County Planning Staff used a series of criteria in designating the growth boundary and the urban improvement area boundary for Visalia.<sup>71</sup> Criteria included: (1) 1990 water-sewer Service Area; (2) Community Service Ability; (3) Incentives and Obstacles for growth; (4) County and City General Plans and Zoning ordinances; (5) Retail Service Areas; (6) Incorporated City Boundaries; (7) Census Boundaries; (8) Annexation Policies and Plans; and, (9) Spheres of Influence as defined for cities by the Local Agency Formation Commission (an independent county authority set up to rule on annexation disputes and establish plans for orderly annexation). The key factor, however, in designating ultimate growth boundaries and urban improvement areas was forecasted demand to meet 1990 land use demands.

Land demand in Visalia was forecasted on the basis of population projection times existing density of persons per acre. In addition, County planners added a flexibility factor of 25% to the land demand so as to prevent inflationary effects and account for lands which, for many reasons, would be held off the market. County planners selected a projected 1990 Visalia population of 83,600 (slightly higher than the current upper estimate). This population translated into a 1990 urban land demand forecast of 17,790 acres--enough to accommodate a population of 160,300 in the ultimate growth boundary and a population of 108,400 in the urban improvement area boundary.<sup>72</sup>

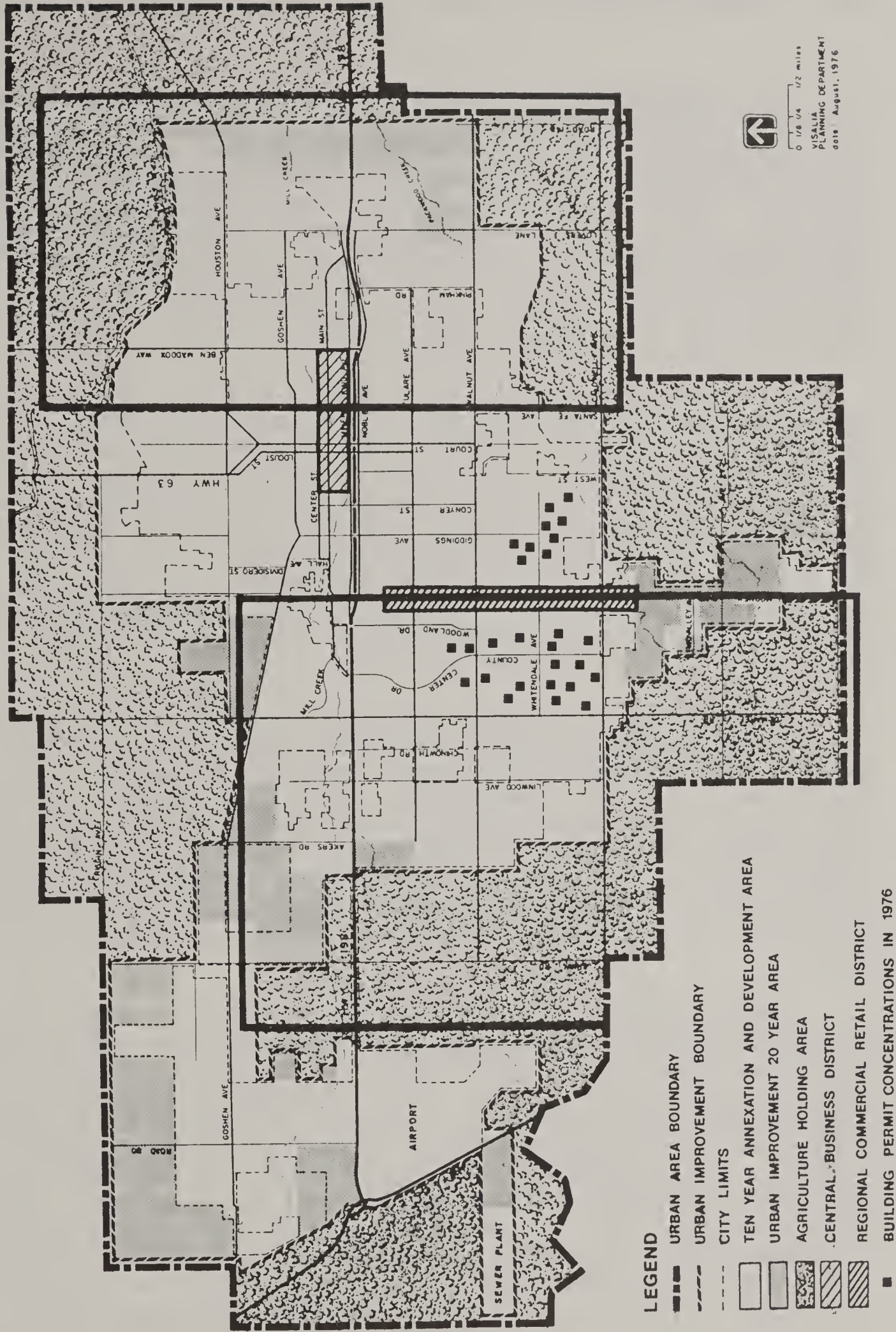
In 1975, the City adopted the boundary agreement (See Figure 10-4). Basically, the boundary would shut off new growth to the south of the City in favor of shifting new growth to the north and the east. According to Grey Dowds, Visalia's Planning Director, this was done to "...shift residential growth away from the airport, diminish traffic problems in the south, upgrade the downtown, and to keep a rein on public costs."<sup>73</sup>



Taken From: Urban/Agricultural Resource Management Taskforce, California Agricultural Land Preservation, California State Office of Planning and Research, Sacramento, California, 1977, p. 71

Figure 10-4

# Visalia Urban Boundaries Map



The County, according to Planning Director Gene Smith, viewed the boundary agreement as an extension of an unwritten policy that "leaves the County out of the urban development business except in unincorporated population centers. In the case of cities, the county has taken the position that urban development ought to be within incorporated limits."<sup>74</sup> In addition, the boundary agreement also defines annexation areas, the interface between agricultural and urban areas, and areas where coordinated planning and regulation need occur.

Since the boundary has been adopted in Visalia, no major changes to the boundary line have been made. According to Dowds, "All new subdivisions have been going to the north and east section of the city (versus the south). In addition we've re-centralized downtown, fixed up distressed areas, and cut public costs."<sup>75</sup> Dowd's view on locational effects is supported by an evaluation of the boundary for the period 1976-1977. In that period, 13 separated parcels of land were being developed on the east side of Visalia while in the southwest section, activity was at a standstill.<sup>76</sup>

Considering Visalia's growth pressure, which jumped after the boundary element had been adopted, one might expect that the boundary lines would be expanded. However, the County Planning Commission and City Council of Visalia have stuck with the boundary. So too have the Planning Commission and Board of Supervisors for Tulare. According to Dowds, "Once a month we get people in asking for a boundary adjustment. They go to the City Council and the Council says no. Then they go to the County and the County says no."<sup>77</sup>

There remains the question of whether or not the ultimate growth boundary and particularly the urban improvement area boundary is too large and thus squandering the County's best agricultural land. Certainly, the urban improvement area boundary is larger than need be to meet projected 1990 population--an excess of 22,845 people based on a maximum improvement area population of 108,400 less the projected 1990 population high of 82,555. The requests received (and denied) by City and County officials for boundary adjustments suggest that current boundaries are crimping somewhat the land market and thus are not too large. The price of single family housing, which partially reflects land costs, increased by 101.7% from 1973 (before boundary) to 1978 (after boundary).<sup>78</sup> This compares with a 136.4% increase for Southern California. Data on 1978 land costs (both raw land and improved single family lot) showed Visalia falling in the middle of 13



cities surveyed in California's Great Central Valley.<sup>79</sup>  
These data suggest that the boundary has had little affect  
on the housing and land market and thus is too large.  
The evidence, then, is mixed, some suggesting the boundary  
is not too large and other suggesting it is.



## V. PERCEPTIONS

The Tulare program enjoys strong support from a variety of interests. Beginning with the Board of Supervisors, Supervisor Harrell commented, "There's no question about it. They (the Board) are fully dedicated to keeping Tulare County a competitive agricultural county."<sup>80</sup> Similar views were expressed for the Planning Commission by Mike Chrisman, a rancher and Planning Commissioner, "We made the basic assumption that agriculture was going to remain our number one industry, so we did something about it."<sup>81</sup>

The Board of Supervisors and Planning Commission have followed their basic commitment to agriculture in their treatment of both urban boundaries and re-zoning petitions. Current reviews of problems with land divisions, Williamson Act parcels, and zoning exceptions also point up the commitment of the Commission and Board. In commenting on this support, Gene Smith noted, "We have received excellent support from both the Planning Commission and the Board. Their decisions, in 98% of the cases, have been based on valid, supportable evidence."<sup>82</sup>

In the view of Planning Commissioners and members of the Agricultural Advisory Committee, most farmers and ranchers give at least grudging support to the program. Others were more enthusiastic and felt that the program was not restrictive enough--current work on revisions to the ordinance et al supports this view. But for most people as Planning Commissioner Chrisman said, "There's a basic concern about centralization of government and the loss of local control. I think that people in Tulare, because they've been involved in the planning process, realize they're going to have to sacrifice a little bit to preserve what we have."<sup>83</sup> Commissioner Sullivan summarized, "People want it for their neighbors, but they hope it doesn't push them too hard."<sup>84</sup>

Strong support for the program is seen in the dairy sector of the agricultural economy. For many dairy owners, Tulare County represents the third location for them within a twenty-five year period. They were urbanized out of Los Angeles first, out of the Chino area of Southern California second, and finally settled in Tulare. Given the costs involved in such moves, it is understandable that dairy owners give such support to Tulare's efforts.

While the development industry is not enthusiastic about the program, they appear satisfied that the County is serious about the effort and that there is little that can be done to work around the goals of the program. Gene

Smith mentioned that "Most of the developers recognize that we are going to hang tough on changes (in the zoning ordinance/map) and that is why they haven't bothered to apply for them."<sup>85</sup> Commissioner Sullivan also felt that "We've been successful in keeping development off of the Valley floor."<sup>86</sup> The Valley floor, of course, has the richest and most productive land in the County.

Wayne Scott, a Real Estate Broker in the County, noted that "It is very difficult to get a zoning change, and I don't know how to circumvent the ordinance."<sup>87</sup> Mr. Scott expressed similar convictions concerning the lines drawn in the Urban Boundaries agreement. Scott's attitude was confirmed by John Grimmus, another real estate broker, who felt that the urban boundaries were very difficult to change. Grimmus also noted that the real estate industry has a fairly good relationship with the County since, "The plan was set down and it has been adhered to--no deviations or favoritism. People know where they stand and can live with it since it doesn't change."<sup>88</sup>

The real estate brokers also felt that the program had changed the nature of land speculation in the County. In general, speculation for non-agricultural purposes is now confined within the urban boundary lines whereas before the Boundary was adopted, speculation was far more widespread. This has also had its effect on land prices within the boundary as opposed to land outside of the boundary. In one case, for example, pre-boundary land was purchased for \$3000.00 per acre.<sup>89</sup> This land eventually wound up within the boundary. Two years from the purchase date, the land was valued at \$10,000.00 per acre for unimproved land. In the same period, another party paid \$2500.00 per acre for land in another section of the city. This land was not included within the boundary line and its relative speculative value dropped accordingly.<sup>90</sup>

In sum, the Tulare County program enjoys good support from decisionmakers, grudging acceptance from farmers, good support from dairy operators, and understanding from real estate interests. The County has had no legal challenges and there is no evidence that support for the program has eroded--if anything support continues to grow.

1. 1978 estimated population of 225,159 taken from:  
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4. *Ibid.*
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13. Williams, Kuebelbeck and Associates, *Visalia Growth  
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23. *Ibid.*, Chapter V.
24. Tulare County, California, Planning Department, *Soils Element ERME Vol II*, Tulare County Board of Supervisors, Visalia, California, 1974.
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35. *Ibid.*, Section 9.55
36. *Ibid.*, Section 9.6
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40. Churchill, Clyde R., *op. cit.*, page 13 and Tulare County, California, Planning Department, *Tulare County Data Book*, *op. cit.*, page 27.
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42. Tulare County, California, Planning Department, *Tulare County Data Book*, *op. cit.*, page 27 and Williams Kuebelbeck and Associates, *op. cit.*, Table 1.
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47. *Ibid.*
48. *Ibid.*
49. *Ibid.*
50. *Ibid.*
51. *Ibid.*, p. 1
52. Interview with County Supervisor Harrell
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61. Tulare County Agricultural Advisory Committee, *op. cit.*, p. 5.
62. *Ibid.*, p. 11, 12.
63. *Ibid.*, p. 13, 14
64. *Ibid.*, p. 17
65. *Ibid.*, p 6, 7, 8.
66. *Ibid.*
67. Williams Kuebelbeck and Associates, *op.cit.*, p. 16.
68. *Ibid.*, p. 46, 70, 87, 94.
69. *Ibid.*, p. 19.
70. *Ibid.*, p. 16
71. Tulare County, California, Planning Department, *Urban Boundaries Element*, *op. cit.*, p. 9, 10, 11.
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74. Smith, Gene, *op.cit.*
75. Dowds, Greg, *op. cit.*
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82. Smith, *op.cit.*
83. Chrisman, *op.cit.*
84. Sullivan, *op.cit.*
85. Smith, *op.cit.*
86. Sullivan, *op.cit.*
87. Interview with Wayne Scott, Real Estate Broker
88. Interview with John Grimmus, Real Estate Broker.
89. Dowds, *op.cit.* and Urban/Agricultural Resources Management Taskforce, *op.cit.* p. 77.
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Case Study No. 11

CONDITIONAL AGRICULTURAL ZONING IN SIOUX FALLS, SOUTH DAKOTA

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CONDITIONAL AGRICULTURAL ZONING IN SIOUX FALLS, SOUTH DAKOTA

by

William Toner

I. INTRODUCTION

Sioux Falls is located in the southeast quadrant of South Dakota (See Figure 11-1). It is 234 miles southwest of Minneapolis/St. Paul and 85 miles north of Sioux City, Iowa. Sioux Falls is the county seat of Minnehaha County, the most populous county in the State (See Figure 11-2).<sup>1</sup>

The City/County area has had continuous population growth since 1890.<sup>2</sup> In the last twenty eight years (1950-1978), the Bureau of the Census shows:

Table 11-1

TOTAL POPULATION SIOUX FALLS AND MINNEHAHA COUNTY  
(1950-1980)

	<u>SIOUX FALLS</u>	<u>MINNEHAHA COUNTY</u>
1950	52,151	70,910
1960	65,446	86,575
1970	72,448	95,209
1978	74,660*	103,146*
1980	92,000**	

\*Census Estimate

\*\* Sioux Falls Planning and Zoning Department Estimate

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Source: U.S. Department of Commerce, Bureau of the Census

In the period 1960-1970, the City's population growth, while expanding, did not keep pace with the expected natural increase in population. City Staff estimates an out-migration during this period in excess of 3,000 people. Bureau of the Census estimates for 1978 versus 1970 indicate continued out-migration.

Figure 11-1

LOCATION OF SIOUX FALLS, SOUTH DAKOTA

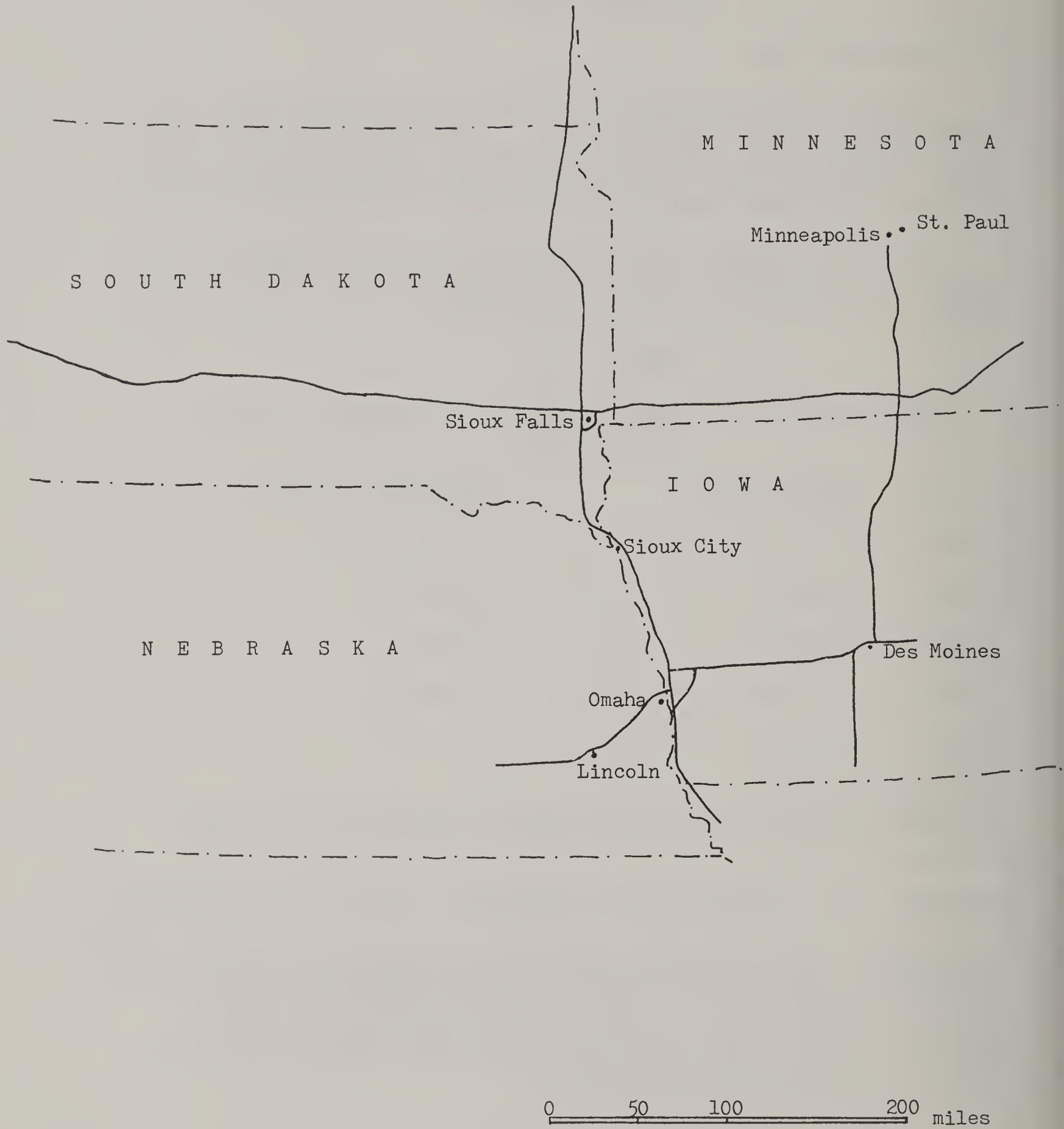
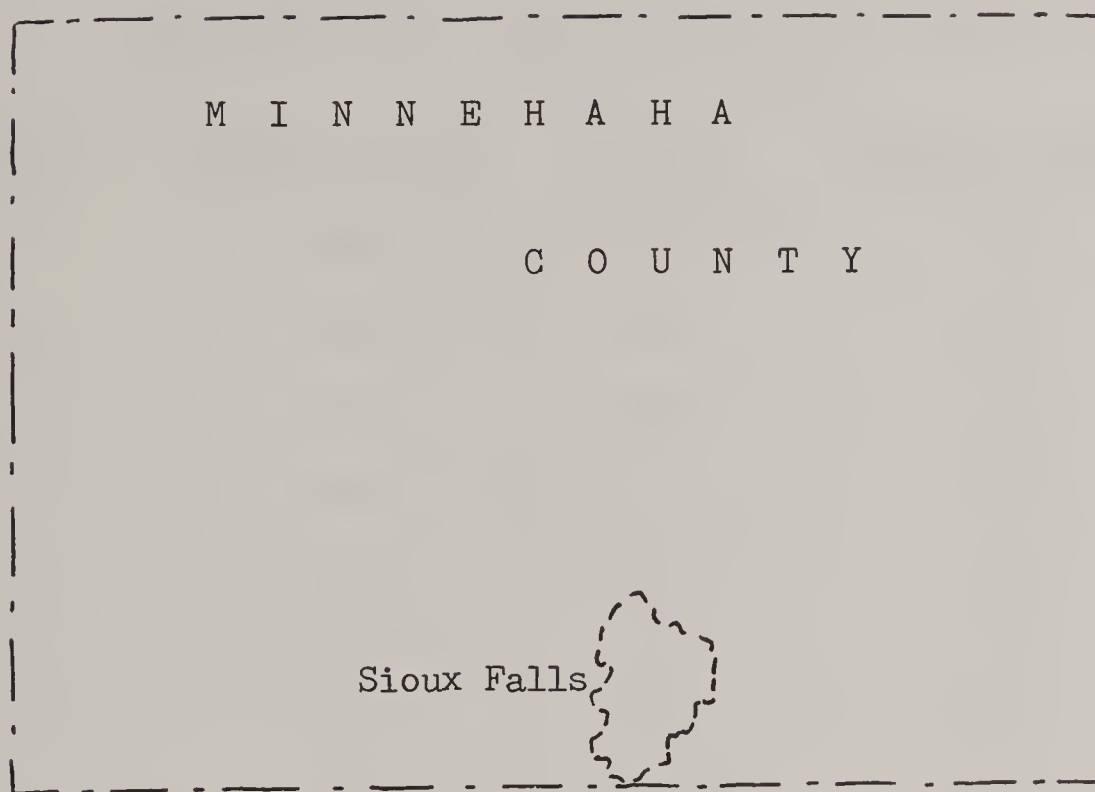


Figure 11-2

SIOUX FALLS, SOUTH DAKOTA: COUNTY SEAT OF MINNEHAHA COUNTY



0 10 miles



The City Planning Staff, however, disputes the 1978 Census estimate. According to City Staff, the 1978 population is estimated at 85,000. This figure is based upon a 25 percent sampling of all households in the City including group homes.

Data on building permits support the City's estimate:

Table 11-2

BUILDING PERMITS IN SIOUX FALLS, SOUTH DAKOTA  
(1970-1978)

<u>Year</u>	<u>Single Family</u>	<u>Duplex</u>	<u>Multi-Family</u>	<u>Total*</u>
1970	259	24	461	744
1971	305	18	585	908
1972	292	40	740	1072
1973	362	40	591	993
1974	260	22	244	526
1975	335	12	405	752
1976	408	72	1015	1495
1977	518	118	1086	1722
1978	<u>516</u>	<u>76</u>	<u>284</u>	<u>846</u>
Total	3,053	410	5,250	8,841

\*Total includes all living units covered under a building permit--one permit may be issued covering a duplex or multi-family unit.

---

Source: Sioux Falls, South Dakota, Planning and Zoning Department

With building permits issued to cover 8,841 residential buildings not including individual multi-family units, it seems that the 1978 Census estimate falls short. Still, although building permits were issued, it does not necessarily indicate that the units were ever built or occupied. Further, the decline in average household size lends some support to the Census estimate. But the permit data do

conform to the City's household survey and the resulting City estimate of a 1980 population of 92,000. Thus, pending the 1980 Census returns, it seems that the City has reversed the trend in out-migration which appeared between 1960 and 1970.

Total employment in the County reflects the recent pattern of population growth:

Table 11-3

## TOTAL EMPLOYMENT IN MINNEHAHA COUNTY

<u>Year</u>	<u>Total Employment</u>
1940	20,884*
1950	29,371*
1960	32,409*
1970	37,676*
1978	57,198**

## Sources:

\*Office of Executive Management, State of South Dakota, South Dakota Facts, South Dakota Planning Bureau, 1976, Page 201

\*\*U.S. Department of Commerce, Bureau of Economic Analysis

Total farm employment for 1978 was estimated at 2,058, representing 3.6 percent of the estimated total employment for the County.<sup>3</sup> 3.6 percent contrasts with the State average for farm employment of 17.2 percent.<sup>4</sup> Unlike the State, Minnehaha County has considerably higher percentages of employment in government, manufacturing, transportation, trade, and services.

Agricultural production in the County resulted in an estimated farm income of \$24,004,000 in 1978--4 percent of total personal income for the County.<sup>5</sup> The 1969 Census of Agriculture showed 1,695 farms, while the 1974 Census showed 1,596 farms, and the 1978 estimates show 1,490 farms.<sup>6</sup>

There were 446,339 acres in Land in Farms in 1978, 86 percent of the County's total land area, and 312,627 acres of harvested cropland--60 percent of the County's total land area.<sup>7</sup>

Total farm income in Minnehaha County, \$24,004,000, ranks far above the average for the State's sixty seven counties, \$7,865,000 per county.<sup>8</sup> Indeed, total cash receipts from farm marketings during the period 1972-1974 placed Minnehaha County second highest in the State.<sup>9</sup>

The agricultural production of Minnehaha County is anchored in its soils--among the most fertile in the State. Out of a total County acreage of 520,320, well over 49.5 percent or 257,000 acres are classified as prime.<sup>10</sup> Of the prime acreage, 900 are located within Sioux Falls City limits, while another 34,100 acres are within a three mile radius of the City limits.<sup>11</sup>

Although the soils in and around Sioux Falls are highly productive, much of the developable area is plagued by a series of soil constraints. This includes problems with shrink-swell, low bearing capacity, frost heave, and seasonally high water table (See Figure 11-3). These problems may be found on both prime and non-prime soils.<sup>12</sup>

Physiographically, the County is part of the Prarie Hills portion of the Central Lowland Province. Most of the County is gently rolling, but parts of it are dotted with moraine deposits and knob and kettle topography. A major floodplain extends along the Big Sioux river and its tributaries. This river, which crosses the City, has flooded parts of Sioux Falls six times since 1950. The sharpest relief in the County is found along this the Big Sioux with some steep slopes running over 70 percent.<sup>13</sup>





11-7






# COMPREHENSIVE PLAN

SIoux FALLS, SOUTH DAKOTA



## ENVIRONMENTAL ANALYSIS

### KEY

-  AIRPORT NOISE ZONE
-  STEEP SLOPE
-  FLOOD PLAIN
-  SIGNIFICANT VEGETATION
-  DRAINAGE BREAK

## II. PROGRAM HISTORY

### The Three Mile Planning Area

This study is concerned with the planning area extending three miles out from the Sioux Falls City limits (See Figure 11-4). This planning area, covering some 41,600 acres, is mostly contained within Minnehaha County (nearly 80 percent), but part of the extra-territorial acreage (roughly 20 percent) extends into Lincoln County which is just south of Sioux Falls. As most of the three mile planning area is in Minnehaha County and as most of the events described herein occurred in Minnehaha County, the attention of this case study is directed to Minnehaha County.

Under South Dakota statutes municipalities may plan for and zone an extraterritorial area extending three miles from the jurisdiction's limits.<sup>14</sup> To do so, however, the chief elected body of the municipality must join with the chief elected body of the relevant county to exercise joint planning and zoning powers. Similarly, the municipal planning commission must join with the county planning commission to exercise their traditional planning and zoning functions.

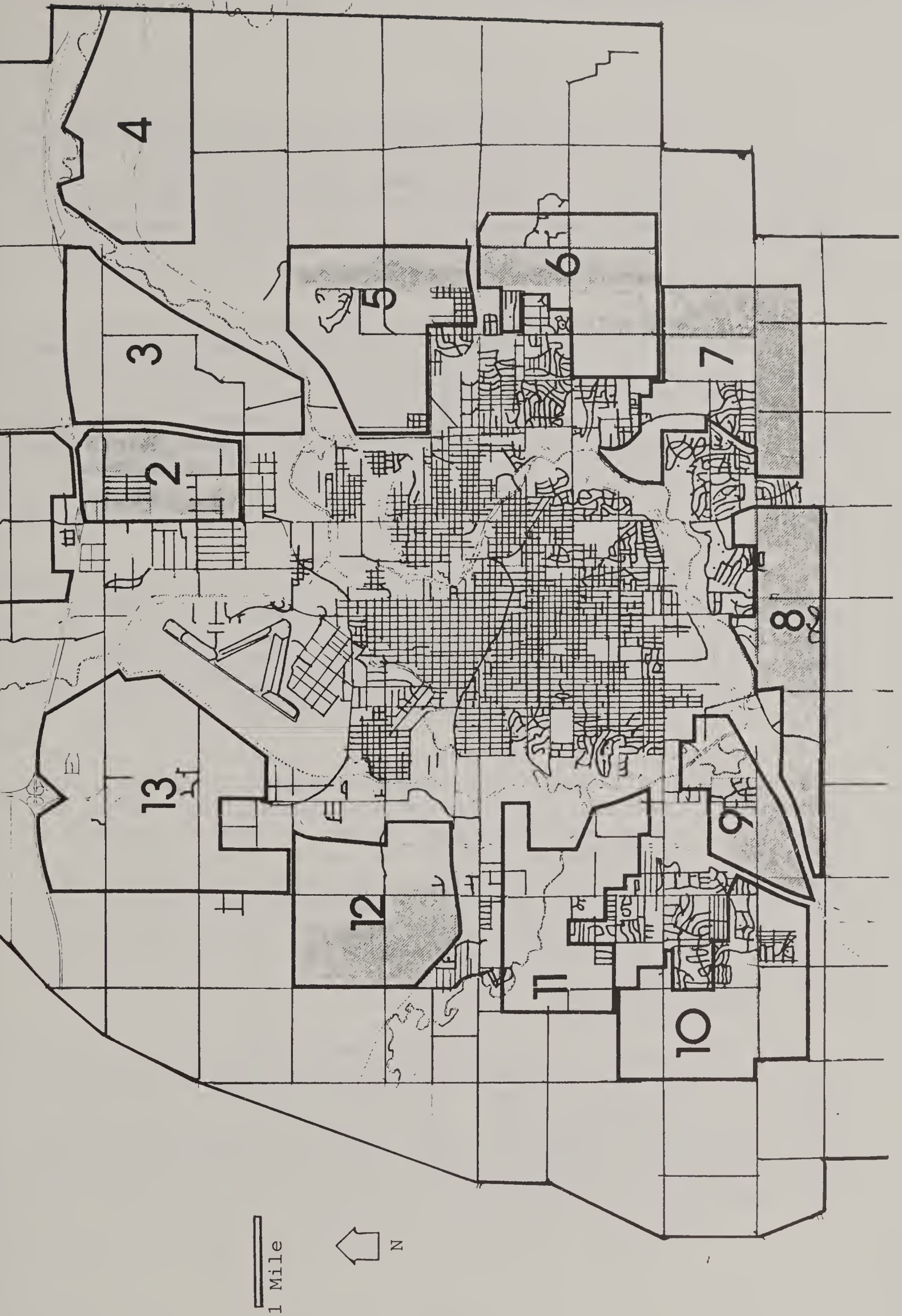
While the joint planning commission makes recommendations on planning and zoning decisions, the final decision rests with joint commission representing the chief elected body of the county and municipality. When the joint planning commission makes recommendations or when the principal joint commission makes decisions, the appropriate municipal or county body votes separately. The joint commissions hear testimony as a group, but they do not vote as a group. The county votes separately as does the municipality. In order to adopt a plan or zoning ordinance or to amend the plan or ordinance, both of the chief elected bodies must approve. If either the municipality or the county rejects the motion or abstains from voting, the matter cannot be passed.

Minnehaha County and Sioux Falls established joint commissions to govern the three mile planning area. The Board of City Commissioners joined with the County Board of Commissioners, and the City Planning Commission joined with the County Planning Commission. The commission of chief elected officials is referred to as the Joint Commission, while the planning commission is called the Joint Planning Commission.



Source: Planning and Zoning Department,  
 Sioux Falls, South Dakota  
Sioux Falls 2000 Comprehensive  
Development Plan, City of  
 Sioux Falls, South Dakota  
 Figure 6, 1979

Figure 11-4: SKETCH OF THREE MILE AREA





### Early Rural Subdivisions

The origin of the joint effort to protect farmland can be traced to two subdivisions--Western Heights and the Klein Addition. Both were built in the mid-1960's, before either the City or County had effective subdivision regulations, and both were located west of the City in the three mile planning area. Together there were less than one hundred units involved.

Both subdivisions shared similar problems. Residents relied upon individual septic systems for sewage disposal. Yet the soils in the subdivisions had a high clay content and the area was underlain by a seasonally high water table. As a result of the clayey soils and high water table, the septic system quickly failed, and sewage collected in basements and drained in open ditches. High nitrate levels were found in nearby groundwater, threatening potable water supply, and in the Klein Addition, State Health Inspectors labeled the new homes "health hazards".

Subdivision residents, unable to sell their homes and uncomfortable or dangerous to live in them, appealed to the City for help. If the City would annex the subdivisions, sewer lines might be extended and the problem solved. But the extension of sewer lines a mile beyond the City's limits was expensive, and City Officials were reluctant to do so.

Eventually, after the U.S.E.P.A. threatened a cut-off in funds unless a sewer line were extended, the City did annex the subdivisions. The sewer line was extended, but Officials learned an expensive lesson. Poorly planned, improperly regulated subdivisions would likely cost the taxpayer a great deal of money. In the Klein case alone, the total cost of the sewer line amounted to \$205,000.<sup>15</sup> The City would incur additional costs in providing snow removal, upgrading roads, and other services to suburban residents. County and Township governments would be faced with similar burdens.

The Klein and Western Heights experience did cause the City and County to revise their subdivision regulations, especially those governing the location and operation of individual septic systems. But the experience did not, until much later, play a direct role in establishing the joint City/County effort to protect farmland in the three mile area.

## EROS Data Center

The second major event in the evolution of the farmland protection effort came as a result of the space program. The U.S. Geological Survey, an agency of the U.S. Department of the Interior, selected Minnehaha County as the site for processing and disseminating photographic imagery and electronic data on the earth's resources. The data were supplied by both spacecraft and aircraft.

The actual operation would be run by members of the Earth Resources Observation Program, a program administered by USGS for the Department of the Interior. EROS Officials contacted Minnehaha County Officials in an effort to pin down an exact location. Their main requirement was that the site be large, several hundred acres, and that it be isolated. Further, EROS Officials insisted that the site be buffered from future urban or suburban development.

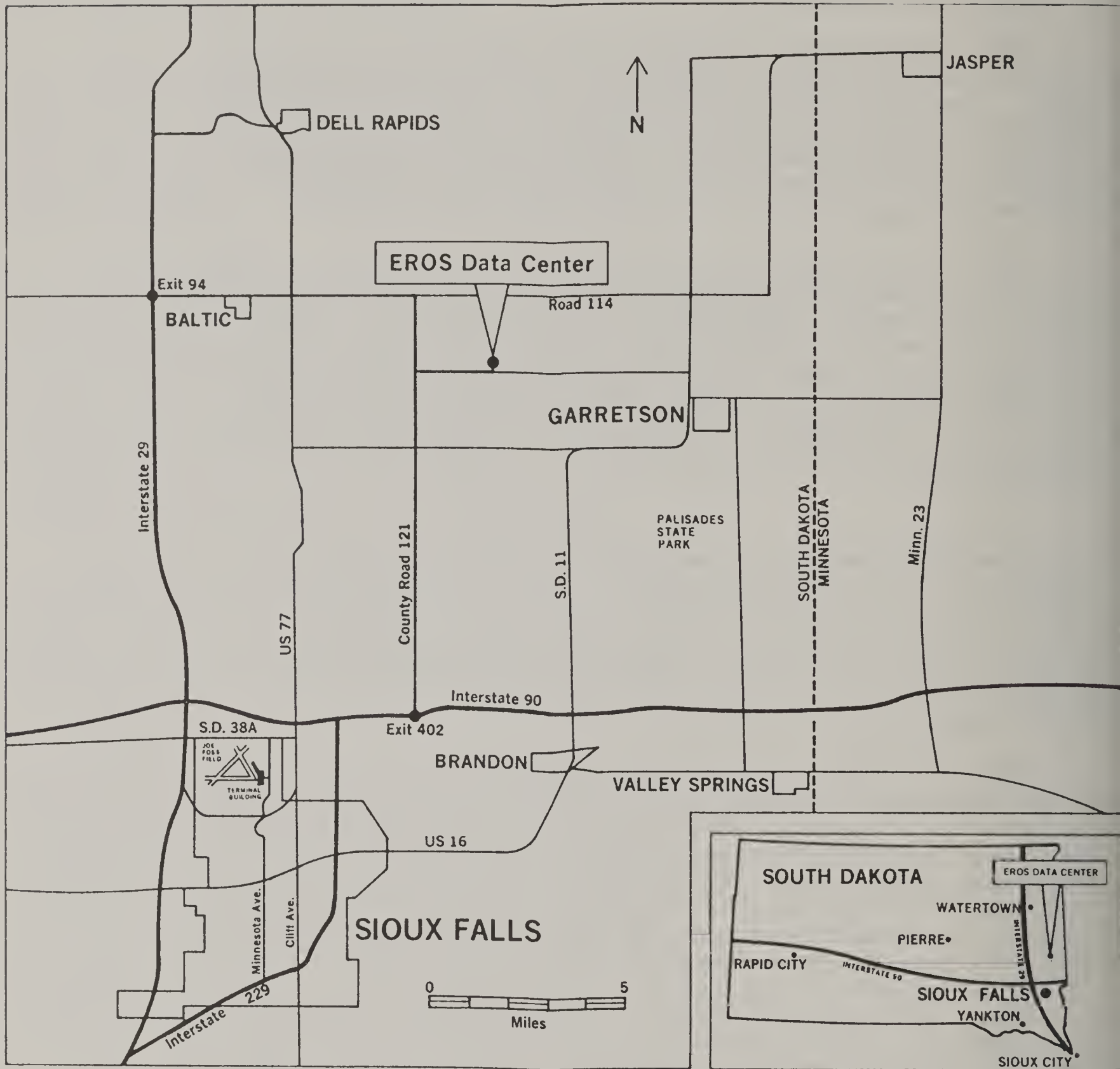
Although County Officials were anxious to attract the Data Center, they were not enthusiastic about any restriction on future development. But the Officials concluded that without the buffer zone there would be no Data Center and decided that it was an acceptable compromise. EROS and County Officials settled on a 318 acre site that was roughly sixteen miles northeast of Sioux Falls (See Figure 11-5).

Shortly after the site was selected, in 1971, the County adopted two highly restrictive agricultural zones surrounding the proposed facility. In a circular zone extending two and one-half miles out from the site's boundary, the County set a minimum lot size for non-farm use at 80 acres. For another two and one-half miles around the perimeter of the 80 acre zone, the County set a twenty acre minimum lot size for non-farm use.

Thus, by the end of 1971, the residents of Sioux Falls and those in the unincorporated area had seen how land use regulations could be important. Their experience with the two subdivisions had been decidedly negative--the absence of effective regulation had cost the taxpayer. The EROS Data Center, on the other hand, was perceived as providing jobs and income and at least a certain amount of national attention for the work being done there. The attraction of the center for visitors and outside researchers provided additional economic gains for the populace. Yet these gains were at least partially tied to the County's

Figure 11-5

LOCATION MAP: EROS DATA CENTER



Source: Braconnier, L.A. and Wiepking, P.J., "Introduction to the U.S. Geological Survey's EROS Data Center," Pages 10-11, No Date, EROS Data Center, Sioux Falls, South Dakota



restrictive zoning policy surrounding the site. Thus, in the minds of some citizens, including officials, land use regulations could both prevent harm to the public and be used to promote the common good.

### Growth Pressures

The early 1970's proved to be a period of substantial economic growth for the Sioux Falls Standard Metropolitan Statistical Area. Several industry groups experienced substantial growth between 1970 and 1976.<sup>16</sup> Service industries jumped from 7,000 in 1970 to nearly 9,400 by 1975; retail trade went from 7,000 in 1970 to 8,500 by 1975; manufacturing went from 4,800 to 6,400; and, government jumped from 6,000 to 7,000 by 1974 and then fell back to 6,500 by 1975.<sup>17</sup> All in all for the five year period, several thousand new jobs had been added.

The expanding economy brought increased immigration into the SMSA. The increased population, estimated at 12,400 from 1970 to 1976, resulted in increased demand for new housing.<sup>18</sup> Heretofore, most new housing had been concentrated in the City, but attractive land prices coupled with a rural setting and proximity to City services pulled many developers into unincorporated areas. Land use regulations in the unincorporated area did little to constrain development activity. The area was governed by an extremely permissive agricultural zone. Many non-farm uses, including residences, were permitted, and the minimum lot size required was one acre. Subdivisions were permitted in the zone provided the subdivisions met standards governing septic systems, drainage, and road access.

The supply of potable water was one of the few real constraints on subdivision activity in the unincorporated area. Water supply was spotty and since the City had not extended water mains, rural subdivisions required individual water supply systems. If the water were not available in sufficient quantity or at sufficient quality, the area could not support a subdivision.

The water supply problem in much of the unincorporated area near Sioux Falls was solved by the Minnehaha Community Water Corporation. The corporation received a loan from Farmers Home Administration, an agency of the U.S. Department of Agriculture, for the construction of a central water system. This system provided water to current residents and would also provide water to new users, including residents of rural subdivisions. Thus, the water constraint was removed for much of the planning area, and officials discovered one more factor pulling development activity into unincorporated areas.

The increased demand for housing, when matched with the substantial supply of developable land in unincorporated areas, resulted in substantial development pressure. An estimated 1,600 new dwelling units were built in unincorporated Minnehaha between 1970 and 1978, while another 3,000 lots were platted in the same area during the same period.<sup>20</sup> Much of this activity was centered in the three mile area.

By 1975 frictions were developing between farmers and new rural residents. The new residents complained about the noise from farm operations, odors from feedlots, the application of fertilizers and other features common to farm operations. Farmers objected to vandalism, theft, and other damages to their farms or operations that they felt were caused by the new non-farm residents. Elected officials of both Sioux Falls and Minnehaha County as well as Townships found themselves faced with repeated requests from the new residents for increases in the types and levels of public services and facilities--snow removal, increased fire and police protection, upgrading of roads and the like. To many farmers the new rural residents posed additional threats. Increased service levels were bound to increase the property taxes that the farmers paid, and as more new residents arrived, the farmer's traditional influence over County and Township government would decrease.

### Revised Planning and Zoning for the Three Mile Area

It was the preparation of a revised Comprehensive Plan for Sioux Falls and the three mile area that eventually put these problems in perspective. Work on the plan had begun in 1976 and attention was quickly focused on alternative patterns of development for the City. In this discussion, the growing problems of agricultural/suburban frictions, increased costs of servicing rural subdivisions, and the loss of agricultural land moved to center stage. City and County Officials concluded that regulatory action needed to be taken in the three mile area before the problems became unmanageable even though the plan had not been completed.

In late 1976 the Joint Commission adopted a quarter/quarter zone for most of the land in the three mile area, and the Board of County Commissioners adopted the same zone for much of the remainder of the County. This zone, technically a fixed area based allocation, permitted one non-farm home on a one acre lot for every quarter/quarter section, roughly 40 acres. By using this zoning approach, net density in the agricultural area would be limited to one non-farm home for every 40 acres. This represented a substantial decrease in the net density for the area from that permitted by the previous zone.



In June, 1978, less than a year after the City and County had adopted the quarter/quarter zone, it was challenged in a referral election. South Dakota statutes provide that a zoning ordinance may be put to a vote if a petitioner obtains enough signatures of voters requesting such an election.<sup>21</sup> In the election, which was limited to the County's unincorporated area, the vote went against the quarter/quarter zone by a decisive 60 percent to 40 percent. Shortly thereafter, the Board of County Commissioners rescinded the ordinance, but City Officials, not bound by the vote, retained the ordinance for a period.

While the quarter/quarter zone had been soundly beaten at the polls, City and County officials remained concerned that haphazard suburban development in the three mile area would continue to generate frictions between farmers and suburbanites, chew up agricultural land, and strain public services. Further, additional work in revising the City Comprehensive Plan had convinced them that such development could be very costly--per acre development costs to the public had been shown to vary by several thousand from one area to the next. Thus, they concluded that the areas need be regulated by a restrictive zone and, in later 1979, adopted a new regulation.<sup>22</sup>

The new zone allowed agricultural uses by right, but excluded subdivisions and made non-farm homes a conditional use. The minimum lot size was set at one acre and they purposely avoided any hint of a density standard as the quarter/quarter standard had attracted so much negative voter attention in the election. But the conditional approach also gave officials the control they wanted over development in the rural area. They would be able to maintain a low density while allowing farmers to sell small, non-productive parcels for suitable non-farm use.

By the time the conditional agricultural zone had been adopted, the City had nearly completed its revised Comprehensive Plan. The plan covered the area within City limits and in the three mile area. It contained forecasts of population and economic growth and translated these into land use requirements. Then, the plan dealt with the capability of the City to meet future land use needs. As it turned out, vacant land in the City would absorb nearly one-third of projected land demand, and two-thirds would be absorbed by lands in the three mile area. But the net requirement for the three mile area was 5,955 acres, only 14 percent of total planning area acres. Because of this excess supply, the plan concluded that the agricultural lands therein ought to be protected. In February 1979, the City adopted the plan and five months



later, the County followed suit.

#### The McMonagle-Bechtel Subdivision

In the same month when the Minnehaha County Board adopted the City's plan for the three mile area, two developers returned to the Joint Planning Commission with a request for a zoning change to allow their subdivision in the three mile area. The McMonagle-Bechtel subdivision would be located on a 160 acre tract, included 128 single family homes, and was in the area governed by the conditional agricultural zone.

On three previous occasions, stretching back to June 1978, the Joint Planning Commission had reviewed the developer's proposed re-zoning, or variations thereof, and had recommended denial. On two previous occasions the Joint Commission denied the request. This time too the Joint Planning Commission voted to recommend denial. The developers returned again in September, 1979, and again the Joint Planning Commission recommended denial. On October 16, 1979, the Joint Commission denied the request once more.

Following the latest rejection, the developers began gathering signatures on an initiative petition to amend the conditional agricultural zone to allow single family homes, or subdivisions, anywhere in the three mile area on one acre lots. The requisite signatures were obtained and the matter was put to a vote of City residents on December 11, 1979. This time the developer's initiative was soundly rejected by the voters as the tally revealed that 80 percent of the voters favored the existing conditional agricultural zone.

## III. FACTORS EXPLAINING THE VOTE REVERSAL

The sharp reversal of voter response between the 1977 and the 1979 election can be explained by a series of factors.<sup>24</sup> First, in 1977, there was great confusion among voters as to the purpose of the quarter/quarter zone. The Joint Planning Commission failed to explain to the public why the ordinance was adopted and what it was intended to accomplish. The Joint Commission adopted the ordinance in the belief that the public would understand that it would protect farms while preventing urban sprawl and saving tax dollars. The message, however, failed to reach the public.

Second, the technical features of the quarter/quarter zone resulted in great confusion among the public. Some voters thought that the quarter/quarter zone required a forty acre minimum lot size for a non-farm residence. Actually it was one acre. Others found that the density standard was confusing or that the language itself was difficult to follow. In any event, opponents of the zone were able to exploit these shortcomings, using the zone as one more example of government imposing its confused schemes on private property owners.

In the 1979 vote, however, two things had changed. The Joint Planning Commission and the Joint Commission had been through a long citizen participation process in the preparation of the revised comprehensive plan for the City and the three mile area. Most of the effort was made by City officials, but considerable resources were expended in getting the plan's concepts to the public. In particular, influential groups such as the Home Builders Association, Chamber of Commerce, and Sierra Club participated in the plan's preparation. As a result, the plan and associated regulations, including the conditional agricultural zone, had reasonable support and good public understanding.

When McMonagle-Bechtel challenged the agricultural zone, local officials viewed it as an attack on the comprehensive plan. Members of the Joint Planning Commission, led by a citizen activist and the Chairman of the City Planning Commission, organized an extensive campaign in support of their ordinance. The main political group, Citizens for Efficient Growth, included the Board of Realtors, the Chamber of Commerce, American Association of University Women, the Homebuilders Association, the Sierra Club, and the Trades and Labor Council. Funds were raised, most coming from the Homebuilders Association, to conduct the campaign.

CFEG made heavy use of both the print and electronic media. Representatives of the group made presentations on the plan, the ordinance, and the consequences of the election to dozens and dozens of groups. In their campaign, CFEG officials pictured their opponents as attacking the Comprehensive Plan. In so doing, they shifted attention away from the ordinance itself. They concentrated their efforts in critiquing the McMonagle-Bechtel subdivision and in showing how the proposed subdivision was the perfect example of what the Joint Commissions were trying to avoid.

In the presentations, DFEG targeted their material to the audience. In dealing with old people or general public interest groups, CFEG emphasized how the plan would save tax dollars by controlling urban sprawl. They also made use of local horror stories, the Western Heights and Klein Addition cases, to show the costs of poorly planned subdivisions, not only the costs to the public but the costs to subdivision residents.

With environmental groups, DFEG emphasized the protection that the comprehensive plan would give to fragile lands and how the plan would help conserve energy. To realtors and developers, attention was directed to showing how the plan designated areas for development and how, through the plan, the City and County would support development projects--officials would use their fiscal powers to prepare areas for development. Agricultural interests were shown how the plan and regulations protected agricultural operations while permitting low density residential development on non-productive land, provided the residence was compatible with surrounding farm operations.

The City's planning staff used excellent political connections to line up additional support. The Planning Director was a member of the City's Chamber of Commerce. Another planner enjoyed excellent rapport with the Trades and Labor Council. Two others were active in the Sierra Club.

Since such groups as the Homebuilders Association and the Chamber of Commerce had been so strongly involved in the preparation of the Plan, McMonagle and Bechtel were unable to solicit much support for their proposal from these traditional resource groups. They did spend several thousands of dollars on the campaign, but were unable to convince voters of the merits of their proposal. They were continually put in the position of having to defend their proposed subdivision against the more substantial rationale of the comprehensive plan. The conditional



agricultural zone, although the subject of the initiative, received little attention.

In sum, the key factor in the election was not the comprehensive plan itself, but the way in which the plan had been prepared. The active role taken in the plan's preparation by key interest groups was the critical element. Once the planning process was complete, the Joint Commission had at least the tacit approval of the key groups. And once CFEG was able to portray the initiative as an attack on the plan, key interests saw the initiative as an attack on their work, their plan. This resulted in a loss of support for the developer's initiative from the very groups that would normally give it. Instead, this support was shifted to the plan and resulted in a broad coalition of interests ranging from environmentalists to homebuilders to farmers. When that occurred, the issue was settled.

#### IV. PROGRAM ELEMENTS

The key elements of the program to protect agricultural land in the three mile area are the zoning ordinance and the comprehensive plan. The Comprehensive Development Plan, Sioux Falls 2000, contains background studies, growth area analysis, policies, a metropolitan development plan, and an implementation program. For the three mile area, the sections on background studies, growth area analysis, and policies are of particular importance.

The background studies contain analysis of urban land requirements to the year 2000. The analysis, based on the land use requirements generated as a result of population and economic forecasts, showed that the City would require 9,140 acres to meet residential, commercial, and institutional, and industrial land use needs.<sup>24</sup> Of the 9,140 acres, 3,185 acres were available in the City's limits leaving an additional 5,955 acres for the three mile area.<sup>25</sup> Thus, by the year 2000, the City would expect to develop roughly 6,000 of the 41,600 acres in the current three mile area.

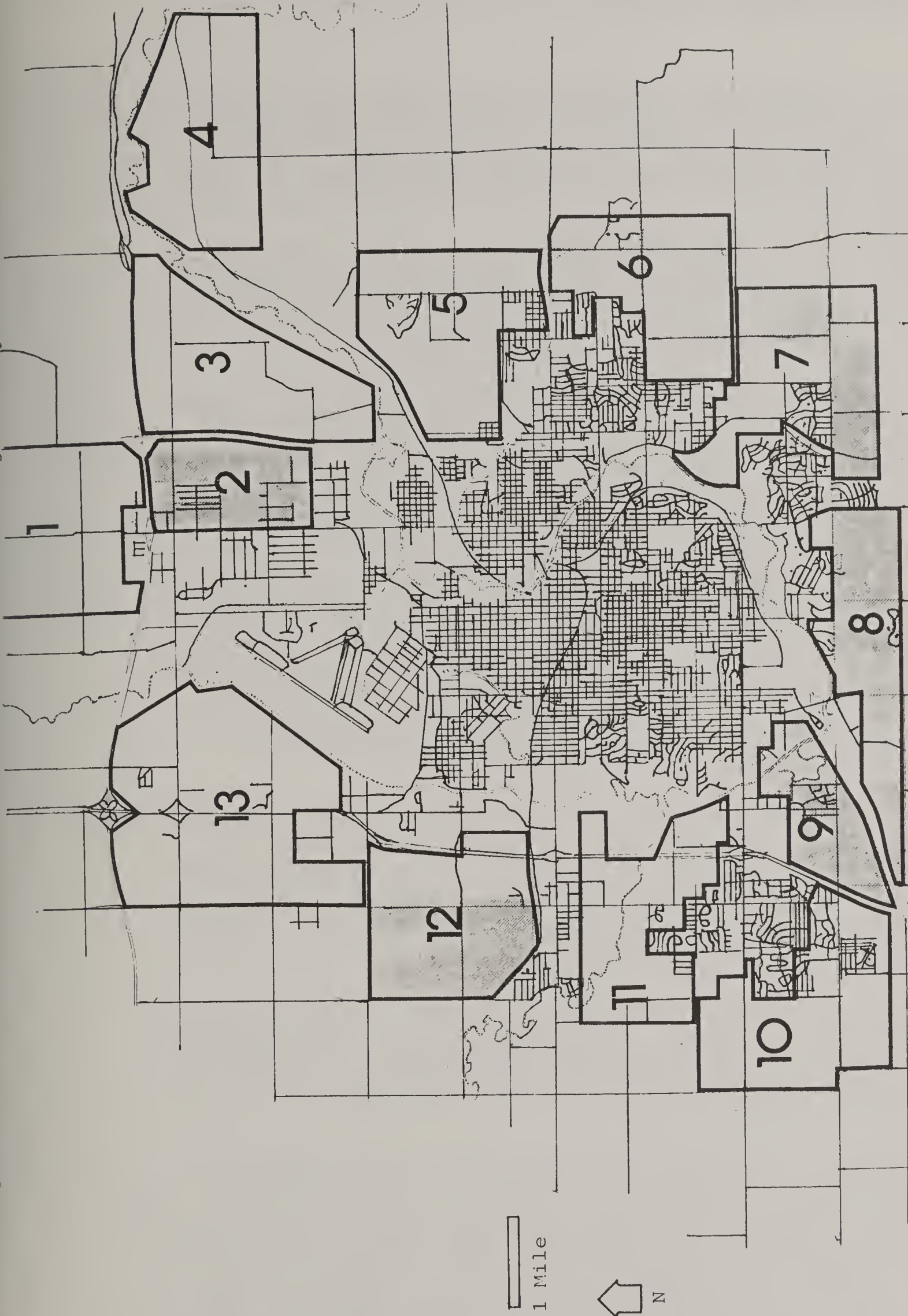
The growth analysis provided an initial designation of urban development patterns in the three mile area. As the amount of land required represented 14-percent of lands in the three mile area, the growth analysis centered on thirteen zones closest to the City's limits, while most of the lands in the three mile area remained outside of the study zones. For each of the study zones, data were collected on public, non-assessed costs for the development of utilities, parks, schools, major streets, and fire protection. Each study area was also analyzed for current land use relationships and environmental conditions. On the basis of the analysis, the plan established priorities for development in the thirteen study zones (See Figure 11-6).

The plan's policies for the three mile area evolved out of the background studies and the growth area analysis. The principal conclusion for the three mile area was that "The extra-territorial planning jurisdiction surrounding Sioux Falls contains vast areas of agricultural land on which urban development will not be desirable during the planning period (to the year 2000). Both City residents and the farming community have a fundamental interest in preventing scattered and haphazard development patterns in this area."<sup>26</sup>

The plan went on to identify a set of specific policies to:

1. Preserve prime agricultural lands for agricultural production in all areas beyond those scheduled for planned urban development;
2. Maintain an evenly distributed, rural density population compatible with the agricultural orientation of the area.

Figure 11-6 GROWTH AREA ANALYSIS (Shaded areas indicate high development costs)



11-21

Source: Planning and Zoning Department, Sioux Falls, South Dakota, Sioux Falls Comprehensive Development Plan, City of Sioux Falls, South Dakota, Figure 6, 1979



3. Limit subdivision of land in the rural area to small scale projects not interfering with agricultural operations; and,

4. Limit commercial and industrial development to those uses which are directly supportive of agricultural operations.<sup>27</sup>

In addition, the plan set policies to protect fragile lands, to limit the provision of public services and facilities, to prevent the extension of public utilities, and to assess rural non-farm residents the costs of public services and facilities provided them.

The plan's implementation section called for a series of revisions to both zoning ordinance and the subdivision regulations.<sup>28</sup> The revisions, save those in subdivision regulations calling for the protection of fragile lands and natural processes, would not affect the three mile area. The plan also recommended the establishment of a capital improvements budgeting program and a more rigorous annexation program. To finance rural public improvements, the plan recommended greater use of special area assessments rather than funding the improvements out of the general funds. Last, the plan called for a much larger role for the City planning staff in evaluating and monitoring all zoning, subdivision, and conditional use actions. The staff would also conduct periodic evaluations of regulatory performance in meeting the goals of the plan.

Most of the recommendations, however, would take time to complete. In the interim, the Joint Commission had adopted the conditional agricultural zone to achieve their basic goals for the area designated for long term agricultural use. This is the RU Rural District.<sup>29</sup> It governs roughly 95% or 39,250 acres of the three mile area. The minimum lot size is one acre.

The district has nine permitted uses including agricultural activities and related buildings, farm dwellings, green houses and related uses, public parks, residences for farm workers, historical sites, day care, family day care, and group day care.

Conditional uses include sand and gravel operations, rock crushing and concrete and asphalt mixing plants, airports, public structures, outdoor recreational facilities, churches or cemeteries, miniature golf and driving ranges, sanitary landfills, feedlots, livestock sales, campsites, riding academy and stables and kennels, temporary roadside stands for the sale of agricultural products, and sewage treatment facilities. A non farm home is a conditional use provided that the home is not located in a

subdivision. The ordinance defines subdivision as "the division of a parcel of land into two or more lots or parcels for the purpose of transfer of ownership or building development."<sup>30</sup> The ordinance does not specify the criteria to be used by the Commissions in evaluating conditional uses.

The remaining fraction of the three mile area is under the RR Rural Residential District. This district covers roughly 2,080 acres. The district is used "where due to the character of the surrounding land uses, the land has been rendered unusable or impractical for agriculture...".<sup>31</sup> Still, the designation would not be made if the resultant land uses would conflict with surrounding agricultural uses or if the site could not be adequately serviced by municipal government. Non-farm homes are a permitted use and the minimum lot size is one acre. The remaining permitted uses are parks, historical sites, family day care, and stables. Conditional uses include golf courses, recreational facilities, churches and cemeteries, schools, group day care, kennels, and accessory residential uses. No standards are specified in the ordinance for the evaluation of conditional uses.

## V. EFFECTIVENESS

As the uniform ordinance for the three mile area was established only two months before the recent referral election, the Joint Commission has had little time to gain experience in ordinance administration. Aside from the single case of the McMonagle-Bechtel subdivision, there have been no re-zoning requests. Thus, it would be premature to reach any conclusions on this program's effectiveness.

The McMonagle-Bechtel case, however, does provide some insight into the criteria used by the Joint Commissions in evaluating proposed re-zonings. The record in this case is particularly important as the Joint Commission has yet to adopt explicit, formal criteria for evaluating either proposed re-zonings or conditional uses.

The closest one comes to established criteria are those contained in pamphlets published by the City to help property owners through the conditional use and re-zoning process. In the case of re-zoning, property owners are advised that Planning Commissioners come to judgement on the basis of the Comprehensive Plan, adjacent land uses, adjacent zoning districts, the nature of abutting streets, and the neighborhood impacts of the re-zoning.<sup>32</sup> For conditional uses, the pamphlet states that Planning Commissioners consider the Comprehensive Plan, adjacent land uses, the effects of the use on traffic and circulation, and steps taken by the property owner to offset any negative effects of the proposed use.<sup>33</sup>

Although it is not stated directly in the pamphlets, Planning Commissioners also give great weight to the testimony of nearby landowners. This is largely due to a provision of the South Dakota statutes which provides that landowners of properties adjoining one which has been re-zoned may overturn the re-zoning. This is accomplished by having 40 percent or more of all landowners within 150 feet of the re-zoned property sign a petition protesting the re-zoning. The petition must be filed within twenty five days of the Commission's approval. If this is done, the approved re-zoning is reversed.<sup>34</sup> The applicant may file again, but adjoining landowners may still use the provision to reject any future approvals. This provision, at least in local practice, also holds for the approval of conditional uses. Thus Commissioners are especially attentive to the testimony of adjoining landowners.

In their multiple reviews of the McMonagle-Bechtel subdivision, the Joint Commission denied the re-zoning for a series of reasons.<sup>35</sup> The property, 160 acres, was located in the southeast quadrant of the three mile planning area. It was located outside of the thirteen study areas



and was approximately two miles from the nearest subdivision (See Figure 11-7). The proposed development, which was changed by the developers in various attempts to get it approved, ranged from a high of 128 single family homes to a low of 40 homes.

The Joint Commission found that the proposed subdivision was inconsistent with the Comprehensive Plan. The site was located outside of designated growth areas. Such a development, concluded Commissioners, would encourage the very type of urban sprawl that the Comprehensive Plan was intended to prevent. The site was also located on prime agricultural land and re-zoning approval would have been contrary to the adopted policy of preserving such lands.

The Commissioners were also impressed by the evidence given by representatives of a Township and School District. The Township Supervisor argued that it was nearing capacity for road maintenance and snow removal and would not be able to service the subdivision except high cost. Further, the Supervisor noted that a township road adjacent to the property was closed periodically due to snow or mud. School District officials said that the subdivision would increase school busing costs, particularly for fuel, and would ultimately result in an expanded bus fleet. Such costs could be minimized if new subdivisions were located closer to existing routes.

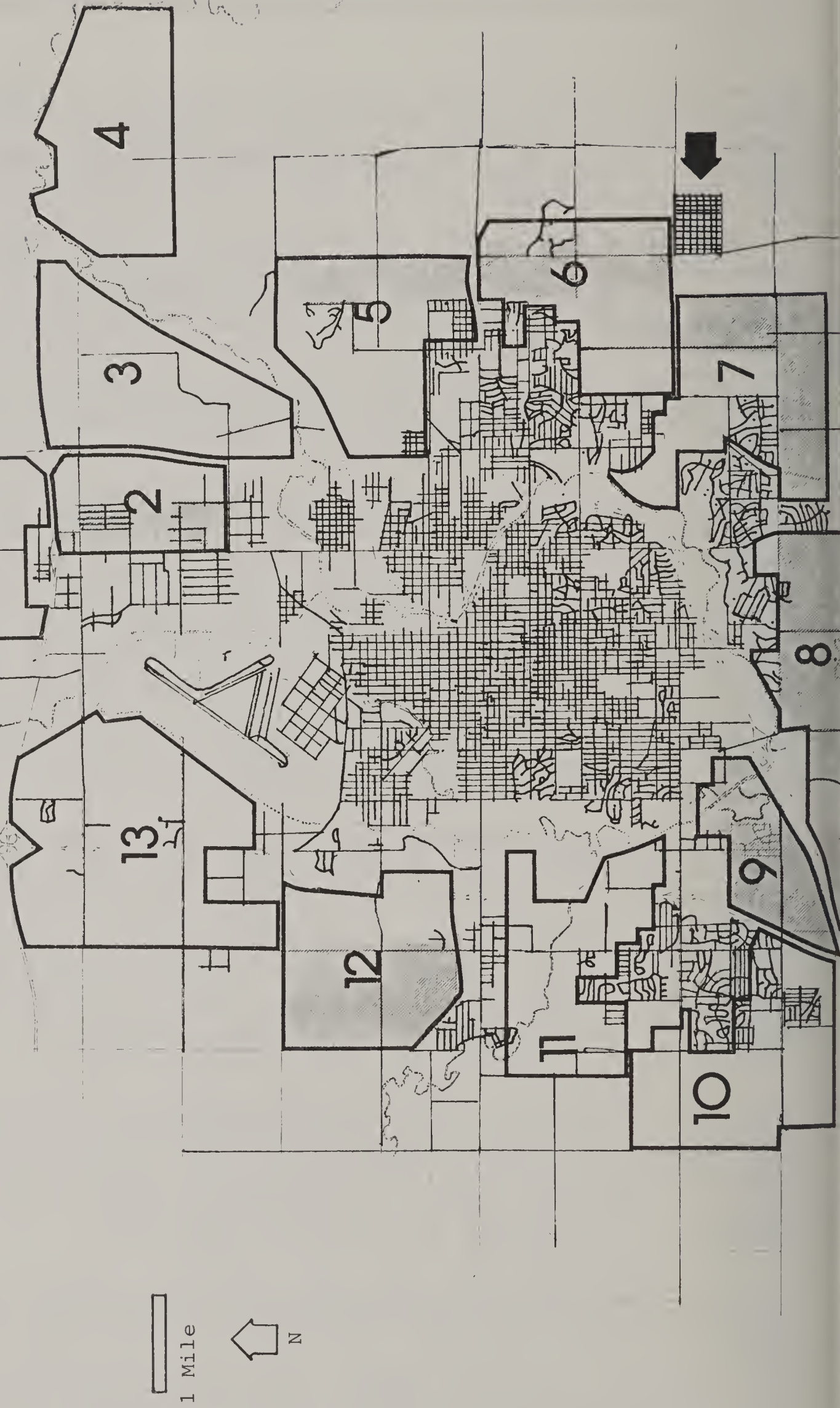
The subdivision was adjacent to a feedlot and drainage from the feedlot traversed the subdivision property. Soils on the site, while prime, were also poorly drained in places. The drainage constraint would interfere with the planned individual sewage disposal systems and could result in the City having to extend central sewer systems to the area. Finally, an adjoining property owner, a farmer, complained about the proposed subdivision saying that it would interfere with farm operations.

In rejecting the proposed zoning change, Commissioners cited all of these reasons. The reasons fell into four main categories: (1) Compatibility with the Comprehensive Plan; (2) Compatibility with adjoining uses; (3) Suitability of the site for the proposed use; and, (4) Service impact of the proposed use on local government.

The Joint Commission has, more recently, begun reviewing criteria for the evaluation of conditional uses and re-zoning. Obviously, the absence of clearly defined criteria in the ordinance is a major weakness, both legal and technical, in their effort. One would expect that the criteria adopted would fall into the four major categories identified above.

Figure 11-7: APPROXIMATE SITE, MCMONAGLE-BECHTEL SUBDIVISION

Source: Planning and Zoning Department  
Sioux Falls, South Dakota,  
Sioux Falls Comprehensive Development Plan, City of Sioux Falls  
South Dakota, Figure 6, 1979





While the program can be faulted for the lack of adopted evaluative criteria, it cannot be faulted for the planning process used to develop the program. The results of the December, 1979 election provided the most dramatic evidence of the broad base of support enjoyed by the Joint Commission in their planning effort. The extent of this support, which grew out of the planning process, was confirmed in interviews with developers, farmers, bankers, and other business interests. Developers support the effort largely because they played a role in the design in the Comprehensive Plan. The Plan and ordinance provided them assurance that their proposals in designated growth areas would be well received by the City. City officials, on the other hand, go out of their way to ease the permitting process for developers following the plan, but would go even further to defeat proposals in designated agricultural areas. Bankers acknowledged that the zoning designation was a key factor in approving or disapproving loan applications. Without the requisite designation, bankers would be unlikely to approve any loans.

The developers and bankers identified two main fiscal effects of the Plan and ordinance. They felt that by reducing the amount of land available for development and by increasing the requirements for property improvements, the price of housing had been driven up. One developer estimated that the cost of new housing had increased by as much as \$1500 per unit. They also felt that the Plan and ordinance had changed the pattern of land speculation in and about the City. Heretofore, land speculation for non-farm purposes was common throughout the metropolitan area. After the Plan and ordinance went into effect, land speculation was limited to designated development areas.

Farmers support the planning effort, but their support does not seem as strong as that of other business interests. Farmers find the property tax savings associated with the program attractive. They also note that in limiting development in agricultural areas, their farm operations will be at least partially protected from suburban interference. The same limiting effect will enable farmers to maintain their political control over Township Boards and will also aid them in maintaining their influence in the County government. Finally, farmers approve of the conditional use provision which allows them to sell small, unproductive parcels for non-farm homes.

Clearly, the Joint Commission is off to an excellent start. The Commission expended considerable time and effort in gathering support for their work and, to date, the effort has paid off. If the Joint Commission puts as much effort into the implementation of the program as they have done in formulating it, one would expect similar success. If not, the effort would be placed in jeopardy.



FOOTNOTES

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2. Office of Executive Management, State of South Dakota, South Dakota Facts: An Abstract of Statistics and Graphics Concerning the People and Resources of South Dakota, South Dakota State Planning Bureau, Pierre, South Dakota, 1976, Page 48.
3. U.S. Department of Commerce, Bureau of Economic Analysis.
4. Ibid.
5. Ibid.
6. All data taken from U.S. Department of Commerce, Census of Agriculture, 1969, 1974, and 1978 (Preliminary Estimates for 1978.)
7. U.S. Department of Commerce, Bureau of the Census, 1978 Census of Agriculture Preliminary Report, Minnehaha County, South Dakota, 1980.
8. U.S. Department of Commerce, Bureau of Economic Analysis.
9. Office of Executive Management, Op. Cit., Page 192
10. U.S. Department of Agriculture, Soil Conservation Service, "National Inventory of Soil and Water Conservation Needs", 1967, State Summaries.
11. Planning and Zoning Department, Sioux Falls, South Dakota.
12. Planning and Zoning Department, Sioux Falls, South Dakota, Sioux Falls 2000 Comprehensive Development Plan, City of Sioux Falls, South Dakota, 1979, Pages 26-29.
13. Ibid.
14. South Dakota Statutes, Section 11-6-10,11,12,13.1
15. Editorial, Argus Leader, Sioux Falls, South Dakota, December 4, 1979.
16. Supra Note 12, Page 5. Save for the EROS Data Center, all employment centers are concentrated in Sioux Falls and its planning area.
17. Ibid.
18. Ibid., Page 18

19. Lundeen, Ardelle A., "Rural Water Systems and Land Use", National Agricultural Land Study, Washington D.C. 1980 (Unpublished paper).
20. Quaife, Tom, "The 40 Acre Question", Argus Leader, Sioux Falls, South Dakota, 29 May 1978, Page 48.
21. South Dakota Statutes, Chapter 11-2.
22. Minnehaha County adopted the zone in August, 1979; Sioux Falls in October, 1979.
23. Thomas E. Jacobson, Assistant Planning Director of Sioux Falls, discusses some of these factors in an unpublished paper entitled, "Sioux Falls Shows Strong Political Support for Strict Fringe Zoning", March 1980.
24. Supra Note 12, Page 26.
25. Ibid.
26. Ibid, Page 55
27. Ibid.
28. Ibid., Pages 87-90
29. Sioux Falls Code of Ordinances, Ordinance No. 101-79.
30. 1970 Revised Zoning Ordinance of the City of Sioux Falls and Urbanized and Rural Areas Adjacent to the City of Sioux Falls, South Dakota, Page 75, Section 15.10.
31. Ibid., 15.401(1.2)
32. Planning and Zoning Department, Sioux Falls, South Dakota, "Rezoning Your Property", No Data
33. Planning and Zoning Department, Sioux Falls, South Dakota, "Conditional Use Permit", No Date
34. South Dakota Statutes, Chapter 11-4
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### III. PURCHASE OF DEVELOPMENT RIGHTS



## Case Study No. 12

### PURCHASE OF DEVELOPMENT RIGHTS IN SUFFOLK COUNTY, NEW YORK

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PURCHASE OF DEVELOPMENT RIGHTS  
IN SUFFOLK COUNTY, NEW YORK\*

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I. INTRODUCTION

A. The Setting

Located in the central and eastern portions of Long Island, Suffolk County covers an area of 929 square miles and contains a population of more than 1.2 million people.<sup>1</sup> Only about 10 percent of the total land area, 86.6 square miles (or 55,397 acres), was reported to be in farms by the 1974 Census of Agriculture. However, the same census found Suffolk to be New York's leading county in terms of the marketed value of its agricultural products. That total value in 1974 was \$68.2 million.<sup>2</sup>

About half of the county's total farmland, 25,000 acres, has been used to grow potatoes. Vegetables have been produced on another approximately 5,000 acres; sod farming takes up about 3,000 acres; and nursery products, another 3,500.<sup>3</sup> The crops produced on the remaining farmland in Suffolk include fruit, poultry, dairy cattle, horses, and grain. Most of the County's farmed land is found in three eastern townships: Riverhead, Southold, and Southampton. Farming there benefits from a long growing season (from the moderating influence of the Atlantic Ocean and Long Island Sound), good soils (well-drained, deep, and responsive to intensive management, among other positive traits), and access to the large market of the New York metropolitan area, which begins in the western townships of Suffolk.

Those western townships (or "Towns" as they are called in New York) were once extensively farmed. In 1950 the County had about 123,000 acres of farmland. However, rapid population growth (made possible in part by an excellent network of commuter highways) pushed residential development into much of western and central Suffolk. Second-home development consumed farmland in areas of eastern Suffolk which are near the ocean and several bays. The County's population increased by 69 percent between 1960 and 1970, from 668,000 to 1,127,000;<sup>4</sup> and it increased by about 15 percent between 1970 and 1978.<sup>5</sup>

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\* Assisting in the preparation of this manuscript were Daniel J. Scanlon and Issac B. Bothomani.



Figure 12-1

PARCELS PUT UNDER EASEMENT IN  
STAGE 1 AND PARCELS OFFERED IN  
1978 FOR STAGE II, SUFFOLK COUNTY, N.Y.  
PURCHASE OF DEVELOPMENT RIGHTS PROGRAM





## B. Historical Summary

Concerned about this loss of farmland to urbanization, newly elected County Executive John V. N. Klein created in 1972 an Agricultural Advisory Committee with the assignment to study alternative ways to protect the remaining agricultural land resources. After evaluating the feasibility for Suffolk of various preservation techniques (including restrictive zoning, tax incentives, and transfer of development rights), this Committee recommended that the County purchase the development rights of 12,000 to 15,000 acres of farmland.<sup>6</sup> In June 1974 the County Legislature authorized the implementation of that approach to protecting Suffolk's farmland. In December of that year, landowners were solicited for their interest in the program. By February 1975 almost 18,000 acres were tentatively offered for development rights sales; but after various difficulties, the County Legislature voted in September 1976 to purchase rights to only 3,883 acres. And by the end of 1980, sales agreements had been concluded on 3,193 acres.

## II. WHAT ARE "DEVELOPMENT RIGHTS"?

Ownership of land can be conceived of as a "bundle of rights," including those of selling or giving away the land, bequeathing it to heirs, hunting or fishing on it, and farming the land.<sup>7</sup> When farmland owners sell their lands' development rights, they retain the legal right to make improvements for agricultural purposes, such as by building houses for farm workers, a roadside stand to sell farm produce, or a facility for drying corn or shelling almonds. Surrendered, however, in development rights sales would be the capability to subdivide the parcel into farmettes or ranchettes (as well as into half- or one-acre lots for single-family homes), to extract gravel, or to build a farm implements store or some other facility not essential to commercial farming of that land.

## III. ELEMENTS OF THE SUFFOLK COUNTY PROGRAM

### A. Voluntary Participation, at least in the Program's Early Stages.

In the Suffolk County program of purchase of development rights (DRs), the completed purchases and all those under consideration as of January 1981 provided for voluntary commitments on the part of landowners. The County's government did not consider a parcel for a DRs sale unless the owner volunteered it for consideration, and the owner could back out of participation in the program at any time before the closing

on the sale of the rights. The program's founder, John Klein, did discuss using the County's right of eminent domain, but only if, after the last round of voluntary purchases, certain farm parcels not in the program were found to jeopardize its success by being omitted. For example, if they were surrounded by program land but were allowed to be developed with housing, children and pets from those parcels might trespass and otherwise cause damage to farming on the adjacent farmland enrolled in the County's PDR program. And adults from those houses might complain about farm dust, odors, and noise and try, through court action or pressure on town governments, to restrict normal farming operations on program land so as to reduce those nuisances to them. However, Klein pledged in July 1978, "{T}he use of the power of eminent domain will never be employed against a land-owning farmer who does not wish to participate in the program but who continues to occupy and farm his land. The condemnation power will be used only...with respect to property owned by nonfarmers, particularly if it is in apparent jeopardy of development."<sup>8</sup>

B. The Restrictions on Development and the Enforcement Procedures

Under the Suffolk County program, after selling his/her development rights to the County, the landowner may use, sell, bequeath, or give away the land only for agricultural purposes. The only alternative to farming is to let the land lie fallow; the County cannot force the owner to have it farmed. The County's definition of agricultural uses precludes using program parcels for processing or retailing operations.<sup>9</sup> Such activities should take place on land which the farmer holds out from the program, such as on an acre or so located adjacent to a public road and which may include the farmstead.

Designers of the Suffolk program were concerned that landowners might try to circumvent the preservation-of-farming intent of the legislation by selling portions of enrolled land to persons who claimed that they would use them for agricultural purposes, but who in fact would farm as a hobby. To avoid such a problem, the Suffolk program provides that enrolled land cannot "be subdivided for sale without approval of the County Legislature except when divided among heirs in a will."<sup>10</sup>

These land-use restrictions are supposed to be binding on all subsequent owners of the land, regardless of how they acquire it (by will, sale, gift). And there is no time limit on the restrictions. At present, the only means by which they can be removed from the land is by purchasing back of the DRs by the current owners and only if voters in a County-wide referendum approve the sale.



Failure to abide by the restrictions opens the owner(s) to court injunctions and fines, among other possible penalties. Enforcement is made possible through (1) yearly inspections of each enrolled parcel by personnel of the County's Department of Land Management (interviews with six farmer-owners of enrolled land indicate that such inspections have been taking place)<sup>11</sup> and (2) reliance on town governments' "building departments not to issue permits on those parcels of farmland without first clearing with the County...."<sup>12</sup> All of the town building departments have been notified as to which parcels within their jurisdictions are affected and as to the necessity for this clearance procedure.

C. Obligations of the County Towards the Owners of Enrolled Farmland

The sale of DRS to the Suffolk County government imposes obligations also on the buyer. The County recognizes that the land is still private property, that the general public has no right to enter upon it despite the government's holding of the DRs, and that the inspections carried out by the County must be during reasonable hours and not be excessively frequent. Moreover, government may not use its possession of the DRs to develop the land, itself, such as for a park or office block. The sale of the DRs legally precludes development by either the private landowner(s) or the public agency which buys the rights.

D. Appraising the Value of a Parcel's Development Rights

The dollar value of development rights can be defined as the difference between the value of the property for its highest and best use and its value for agricultural purposes.

Appraising land for these two different values, particularly those for agricultural use, may not be easy. In Suffolk's experience, special expertise was needed to assess farm-use value because the normal appraisal method of finding local comparable sales (i.e., parcels of similar natures which had sold recently) was not feasible. Farmland in Suffolk County did not sell just for its agricultural-use value; virtually all parcels had some (or a lot of) development value in their sales prices. To find land that was selling for only its value for farming and that was comparable to Suffolk County farmland, the appraisal consultant surveyed various areas in Northeastern states and found four which met these two criteria: ones in northern Massachusetts, along the Connecticut River Valley, in Orange County, New York, and in southern New Jersey.<sup>13</sup>



Among the tests for comparability between land in one of these areas and Suffolk County land was whether the strawberries being grown in the matched areas were of about the same size at the same time in the growing season and, also, whether the blossoms on potato plants were comparable. In other words, if the matched farms in a remote part of New England were selling at an average of \$1,200 per acre, the Suffolk program priced the agricultural-use value of similar farmland in Suffolk County also at an average of about \$1,200 per acre. Being able to back up claims of comparability with such information as about strawberry and potato blossom size proved to be a great help to county officials when they met with landowners and the latter contended that the county's valuation of their land's farm-use was too high.<sup>14</sup>

E. Attracting Landowners to Participate in the PDR Program

In December 1974 the County contacted by mail 1,450 owners of about 1,800 parcels of farmland, whose acreage totaled approximately 56,000 acres.<sup>15</sup> This total acreage represented virtually all the farmland in Suffolk. The owners were invited to offer to sell their land's development rights to the County. By February 11, 1975, the cut-off date for receiving offers, the County had 382 tentative bids covering 17,949 acres.<sup>16</sup> In this first round of purchasing, the County bought the DRs to only 3,193 acres. However, when in preparation for the second round the County asked in August 1978 for farmland owners again to indicate their willingness to sell DRs, it received 266 offers covering 13,078 acres.<sup>17</sup> In sum, there was no lack of landowner interest in the program. How can we account for the interest? Why were they apparently willing to forego any future development of their land and settle instead for receiving the difference between the land's market value and its value for farming purposes?

To answer this question, interviews were conducted with six farmers who participated in the program and, also, with two officers of the Suffolk County Cooperative Extension Association and with the Executive Secretary of the Farm Bureau in the County, with all three of the second group of interviewees having been active in informing farmers about the program. In effect, the latter three represent "expert observers" about motives of farmers who sought to participate in the program, because the three had so much contact with such farmers.

1. DRs Sales Facilitate the Transfer of Fixed Farm Assets between Generations

From the interviews with the two extension officers and the Farm Bureau official came three main reasons why farmers had interest in Suffolk's PDR program. All three informants reported that a major attraction of the program was its promise of freeing farm families from heavy inheritance tax burdens which might force the sale of land or equipment, so as to obtain the liquid assets necessary to shoulder that burden. In other words, the program was seen to be a great aid in effecting the intergenerational transfer of fixed farm assets. Whether the transfer was at death through bequests or as gifts during the owner's lifetime, tax had to be paid (inheritance or gift). However, by converting the land's development potential into bank deposits, stocks, or other liquid assets, the farm family would have the means to pay those taxes without the necessity of selling off land or other fixed farm assets. One of the extension officers recalls that farmers interested in the PDR approach to protecting farmland brought up "numerous examples of how the deaths of landowners forced the sale of land to pay the taxes."<sup>18</sup>

Three of the six participating farmers who were interviewed also mentioned inheritance/gift-tax benefits as being among the principal attractions of the program for them. One of the three explained what would likely happen to farm families like his if they lacked the considerable amounts of liquid assets which the program could yield through sale of development rights:<sup>19</sup>

We wanted to protect our farming operation for at least one more generation. We've seen many farmers, even with a will, try to pass land on to a son, who needs to sell 75 to 95 percent of the farm to pay inheritance taxes.

The death taxes on his and many other sizable farming operations were likely to be very burdensome because the land would be assessed for tax purposes at high levels. In 1973 undeveloped farmland in Suffolk reportedly had market values ranging from \$4,000 to \$7,000 per acre,<sup>20</sup> while its value for agricultural purposes was closer to \$1,500.<sup>21</sup> The \$2,500 and greater differences derived from expectations that the land would soon or eventually be put to urban uses, either as a result of second-home development near the excellent ocean and protected bay-water recreational opportunities found in eastern Suffolk or as a consequence of further linear-type urbanization of the county emanating from the New York metropolitan area.<sup>22</sup>



From the farmland preservation point of view, these high market values for land were undesirable both (a) because they tended to force farm families to sell land in order to pay the estate taxes based on those high per-acres values and (b) because other farmers could rarely afford to buy the land offered for sale; developers or speculators tended to be the buyers.

2. Provide Capital to Reinvest in Farming Operations or to Pay Off Debts

The two extension agents interviewed on this question of what attracted farmers to the Suffolk PDR program recalled also that a major appeal was the promise of obtaining capital with which to expand their farming operations or at least to retire some of their indebtedness. Two of the six interviewed farmers used proceeds from the DRs sales to the County to buy additional farmland, and two others had intended to do the same but were deterred (in one case, because all the proceeds were needed to meet existing debts; and in the other, because a promising deal fell through).

The two who did acquire extra land followed a somewhat risky path. In anticipation that the County would purchase the DRs on good farmland in his area, each of them bought a nearby parcel at the going market price (\$3,500 per acre on average in one case), offered it for participation in the County program, carried an expensive mortgage on it until the County closed on the DRs sale on that parcel, and then greatly reduced the carrying costs on it by using the proceeds to pay for most of the initial purchase price. In one case, the farmer reportedly paid an average of \$3,600 per acre; he received about \$2,800 for each acre from the County for the DRs on the land; he then gave the bank the \$2,800 per acre and thus was left with an affordable debt of only about \$800 per acre. The risk, of course, was that the County might not have bought the DRs to those recently acquired, expensive parcels. If he and the second farmer who used this approach had offered for DRs sale land acquired some years in the past, and the County had decided against purchase, they would not be left with as high carrying charges, since the purchase price of that land tended to be lower. On the other hand, such land would have probably appreciated significantly in value, making the farmer vulnerable to capital gains tax when he sold its DRs. In contrast, land recently bought in anticipation of the County's program would tend to increase in value much less between the time of purchase and date of the DRs sale. Little if any of the farm family's liquid assets would be wasted on capital gains tax.



The two other farmers who intended to acquire land would have bought new parcels only after they received payment from the County for the DRs on parcels they had held for many years, not in expectation of such payments. In one case, the farmer hoped to buy land which had had its development rights severed through purchase by the County; it had been owned by nonfarmers and was much more affordable stripped of its development potential. However, those owners could not agree to accept his offer.

Instead of buying additional land with the proceeds of their DRs proceeds, these two farmers and a third (who was interviewed) used the money to retire existing debts. Potato farming had had several poor years in a row, causing many farmers in Suffolk to accumulate dangerously high levels of indebtedness. One of these farmers said, in response to a question about what difference the PDR program had made to his farming operations, "I would have been out of business ....I owed \$270,000." A second farmer, replying to the same question, reported that without the PDR program he would have had to take out an additional mortgage or sell some land. When he first offered his land to the County for participation in the program, in 1974, the option of selling land for a good price was real. However, in 1976 development and speculative land sales dropped off considerably and remained at depressed levels into 1980.

### 3. Lower Real Estate Tax Assessments

A third attraction for farmers of Suffolk's PDR program, as reported both by an extension agent and by participating farmers, was the expectation of lower real estate taxes. With the land stripped of its development potential, assessments would tend to be based on a much lower market value, let us say \$1,200 per acre rather than \$3,500. Although little if any Suffolk County farmland was actually assessed at its full market value, there was widespread concern that the state legislature and/or courts would require it. Therefore, participating in the County's PDR program would ensure that assessments would either not rise or not increase as markedly.

### 4. Other Attractions to Farmers

Two other attractions of the Suffolk program emerged from interviews with participating farmers. The County was liberal about which parts of their farms could be held out

from the program and thus remains developable. Rather than being compelled to commit their entire farms or being prevented from withholding road frontages and other likely developable parcels, they appeared to be largely free to decide which land to include. One farmer was able to keep out six water-front building lots and another six along a major public road.<sup>23</sup> Another farmer withheld all of his road frontage. And a third retained the development rights to all the farmland on the north side of a public road which divides his acreage. The parcels which these farmers did commit to the program were not without development potential. However, it appears that the County's permissiveness on this issue allowed the land with greater potential to remain free for development. On the other hand, a liberal policy may have been essential to obtain farmer backing for the program. John Klein established in 1972 an Agricultural Advisory Committee, consisting of 14 farmers, to recommend to him the most feasible approach to protecting the County's dwindling farmland. That committee recommended a PDR approach, but one of its conditions was that farmers not be dictated to as to which parts of their farms they committed.<sup>24</sup>

Another attraction of the PDR program, at least to one of the participating farmers who were interviewed, was that it promised to provide a sizable chunk of money at less risk than if the same land had been sold to a developer. While the latter would offer a higher purchase price (reflecting the land's full market price, not just the value of the development rights), he would probably pay only 20 to 30 percent down, with the remainder due over five or so years. If during that period he defaulted, which was a real possibility, given the variability in market demand in Suffolk, the farmer would regain possession of the land. However, by then its farmability might well be greatly reduced by the construction of a few model homes and a subdivision road or two. In contrast, the County's PDR program promised to provide full payment for the development rights at the closing on the sale and to leave the farmer in possession of the land in its full agricultural state.

##### 5. The Program's Attractions to Nonfarmer Landowners

As Table 12-1 indicates, nonfarmers owned two-thirds of the land appraised for DRs sales in the first round of purchasing (which began in 1976) and 46 percent of the acreage offered in 1978 for the second round. For these owners, the program's main attraction presumably was the cash payment. Many were land speculators who apparently had overextended themselves, faced cash-flow problems, and greatly welcomed the lump sum which the County program promised to provide at the closing on the DRs sales.

Table 12-1

OWNERSHIP OF LAND  
 APPRAISED OR OFFERED FOR DEVELOPMENT RIGHTS SALES  
 FOR THE FIRST AND SECOND ROUNDS OF PURCHASES  
 SUFFOLK COUNTY PROGRAM

Round	Farmer-owned		Ex-farmer owned		Non-farmer owned		Total acres
	acres	% of	acres	% of	acres	% of	
1st: approved for appraisal, September 1976 <sup>a</sup>	1,302.1	33.5	na	na	2,580.9	66.5	3,883.0
2nd: Bids opened September 1978 <sup>b</sup>	6,509.1	46.7	1,040.4	7.5	6,389.3	45.8	13,938.8

Source: Office of the County Executive, Suffolk County, Hauppauge, N.Y.

Notes: <sup>a</sup>As discussed earlier in this case study, a total of 17,949 acres were offered for consideration. The County's selection process narrowed the amount for appraisal down to these 3,883 acres.

<sup>b</sup>This acreage represents the total offered for consideration, before any parcels were screened out in the County's selection process.



F. Choosing Individual Parcels for Development Rights Purchases

1. First Round of Purchasing

The selection of individual parcels out of the pool of farmland offered by owners for consideration was formally the responsibility of the County Legislature, but for the first round of purchases (approved by the Legislature in September 1976) the legislators accepted the recommendations of the County Executive, John Klein, who in turn was guided by a special committee, the Select Committee on the Acquisition of Development Rights. This committee consisted of Klein, three County legislators, representatives of four eastern Suffolk townships (where most or all of the acquisitions of DRs was expected to take place), the Director of the County's Planning Department, and two cooperative extension officers. The extension specialists were asked to help the committee to judge the farmability of parcels offered for possible DRs sales, the representatives of the four towns had the role of assessing (among other questions) how the permanent restriction of certain parcels to agricultural use would impact on their respective towns' growth plans and other interests, and the County Planner had the responsibility of evaluating how potential DRs purchases would affect County-wide growth and other plans.

The Select Committee was provided with a list of selection criteria which Klein's 1972-74 Agricultural Advisory Committee had drafted: soil suitability, present land use, contiguity to other farmland, development pressure, and asking price.<sup>25</sup> The Advisory Committee urged that the County acquire the DRs to highly productive, currently farmed land (mostly with soils in Class I or II according to the U.S. Soil Conservation Services' system of rating and in reasonably large tracts (200 acres or more) or where the parcels enrolled in the program would be contiguous to sizable tracts of farmland which, though not in the program, would be unlikely to be developed. The concern was that the agricultural viability of program land could be severely jeopardized if the land itself, consisted of small parcels and the land around it became developed. In that event nonfarm neighbors would likely push to curtail farming operations that produced noise, dust, and odors and/or other restrictive conditions would emerge from the juxtaposition of relatively small and isolated farm parcels with nonagricultural development. The Advisory Committee had the related concern that "preserved farms should be bounded to the maximum extent possible by existing roads or highways, or other open space, so as to provide for a buffer or insulation zone between the farm activity and other nearby residential or commercial uses".<sup>26</sup>

In specifying development pressures as a criterion, the Advisory Committee was urging that the selection process not waste County money on land which was unlikely to be developed. However, its asking-price criterion conflicted with this concern over development pressures. The higher the attractiveness of a parcel to developers, the higher was likely to be its asking price. On the other hand, the contiguity criterion tended to be compatible with the concern over excessive asking prices. The larger the blocks of land offered for DRs sales, probably the lower the average per-acre price, since much of a large tract tends to be away from road frontage and, hence, more expensive to develop (i.e., internal roads must be built), and since relatively fewer buyers can afford the total cost of a large versus smaller tract.

To understand the actual selection process, interviews were conducted with two persons who participated in the Select Committee's meetings on the parcels for the first round of purchases. Both reported that contiguity, quality of soils, and present land use (i.e., whether the land was currently being farmed) were important criteria. One of the two recalled that "some parcels were bumped because they were too high" in price, while others were excluded because they were too small to be economically viable or were not genuine farm parcels, but rather "golf courses or some other silly thing." In fact, none of the bids from western towns was recommended for purchase, both because those parcels tended to be small and isolated and, hence, be poor risks in terms of their long-term farming viability and also because, being closer or amidst intensely developed areas, their asking prices tended to be high.<sup>27</sup>

Another very important, but unexpected decisional criterion emerged during the selection process for the first round of purchasing: cash versus deferred payments. When soliciting bids, the County asked landowners if they preferred to be paid in one lump sum or in several installments. The attraction of installment payments was that whatever capital gains owners realized could be spread over several tax years, so as to reduce the tax bite. Many owners indicated in their offers to the County that they preferred deferred payments. However, the County learned in October 1975 that the Internal Revenue Service (IRS) would not approve its payment plans. Since New York State law prohibited the County from making regular installment payments, the County had proposed to effect such payments indirectly through local banks, so that the landowners would be vulnerable to taxing capital gains only as the banks paid them. However, lacking IRS approval, the Select Committee could recommend for purchase only those parcels whose owners had indicated a willingness to receive lump-sum payments. The Committee did not choose, perhaps, unwisely, to resurvey all owners whose land was still in the pool (i.e., it had not been excluded because of excessive asking prices, poor soils, etc.).



Such a resurvey may have been prudent, because so much otherwise eligible land was lost. By one estimate, the failure of the installment payment scheme caused the eligible pool to lose over 6,000 acres.<sup>28</sup> From the remaining land, the County Executive's office put together a package of 60 parcels, totaling 3,883 acres, with reportedly a careful effort to achieve as large clusters as possible.<sup>29</sup> However, the potential for clustering was severely limited. Too many parcels which could have contributed to sizable groupings were excluded because of their owners' preference for installment payments.

## 2. Second Round of Purchasing

When the Select Committee met in 1979 to consider the bids on 13,939 acres offered for the second round of purchasing, the cash installment - payment issue no longer existed to plague it. All bids were solicited for cash payments only. However, another bothersome criterion surfaced to conflict with the contiguity and asking-price criteria (which remained as major bases for selecting individual parcels). Both Klein and his successor as County Executive, Peter F. Cohalan (elected in the fall of 1979), publically called for including parcels from the western towns.<sup>30</sup> Cohalan justified his goal of "a balanced program geographically" in terms of preserving "in the more urbanized area of the County land that will stand as a testimony to the agricultural history of the County."<sup>31</sup> However, participants in the 1979 Select Committee concluded that the main motive for geographic balance was political:<sup>32</sup> Reported one participant:<sup>33</sup>

Klein recognized that the program wouldn't go politically unless there were a few hunks of little land that those legislators {from western towns} could tell their constituents that they voted to spend money on.

The geographic-balance criterion, though probably politically necessary, risked being financially exorbitant. The 1979 Select Committee recommended that the County purchase the development rights to five parcels in the western Suffolk Town of Huntington. But the per-acre asking prices of those rights averaged about \$13,400.<sup>34</sup> Also recommended were five parcels in another western town, Smithtown, with an average asking price of \$9,946.<sup>35</sup> In contrast, the 33 Riverhead Town parcels on the recommended list had an average price of only about \$4,400 per acre.<sup>36</sup>



Geographic balance appeared to conflict also with the farmability criterion of protecting sizable tracts of land. The five Huntington parcels averaged 52 acres, and the average of the five in Smithtown was 18 acres.<sup>37</sup> Moreover, all of the Smithtown and most of the Huntington parcels were scattered rather than contiguous.

Another criterion which conflicted with contiguity, at least in the Town of Riverhead, was the wishes of the local government. By the contiguity criterion, Riverhead should have been the scene of most of the action in the second round (or "Phase") of purchasing. Since more than two-thirds of the first round's sales occurred there, proportionately more of the Riverhead parcels offered for Phase II were contiguous or very near to Phase I parcels than in any other town. However, Riverhead leaders, notably, its Supervisor (the equivalent of a mayor), were concerned that, if much more land became permanently undevelopable because of DRs purchases, the town's legitimate growth plans would be stymied and its tax base, seriously weakened.<sup>39</sup> Riverhead's representatives on the Select Committee reportedly asked their colleagues to approve fewer parcels from their town for purchase than would otherwise have been endorsed, given many of those parcels' attractiveness according to the contiguity and other criteria.<sup>40</sup> However, except when addressing the special needs of Riverhead and the western towns, the Select Committee reportedly gave the most weight to the criteria of size and contiguity.<sup>41</sup> Favored were farm parcels which, by themselves, in conjunction with other tracts newly proposed for DRs sales, and/or with adjacent land that had been committed under Phase I, would constitute sizable blocks of land.

#### G. Lining Up Political Support in the County Legislature and from Elected Executives

##### 1. Winning Endorsement from Key Leaders

When the \$21 million funding for the first round of purchases won narrow approval in September 1976, essential support for that close victory came from County Executive John Klein (a Republican) and from the County Legislature's Presiding Officer, Floyd Linton (a Democrat). Why did they actively support this approach to protecting Suffolk's farmland resources? Klein has said that he found no other approach which promised to be effective.<sup>42</sup>

There is only one clear and effective method for dealing with the...issue -- the rising value of farmlands for non-agricultural purposes with the resulting temptation to the farmers to sell. That answer is to extinguish that process by the only fair and constitutional method - acquisition of the property itself, or of the development rights to the property.

Farmers on his Agricultural Advisory Committee had told him that tax incentives as an approach would not succeed, that the bundle of incentives (tax and others) offered by New York State's agricultural districting approach (see Case Study No. 2) also would unlikely be strong enough to deter conversion of the County's farmland, and that Suffolk farmers opposed a zoning approach because it would deprive them of the development value of their land without compensation. A farmer on the Committee put the issue this way: "The only fair way to do it is to compensate the farmer for giving up the right to develop his property."<sup>43</sup>

As an attorney, Klein was concerned that the courts might invalidate farmland preservation policies which sharply reduced the market value of land without compensation. Down-zoning Suffolk farmland to exclusive agricultural use would have, in many cases, lowered market values by \$3,000 to \$10,000 or more per acre and, hence, have risked being adjudged unconstitutional under the Fifth Amendment's proscription against taking "private property...for public use, without just compensation." And as a politician, Klein suspected that a program designed to protect the farming industry would have been politically unviable if most farmers opposed it. Moreover, zoning would have been a cumbersome tool to use, since land-use regulatory powers were vested in the ten separate town governments, not in the County.

Floyd Linton, Presiding Officer of the County Legislature 1976-77, was attracted to the PDR approach also in part because zoning seemed unworkable:<sup>44</sup>

At first people said, "Oh, we'll go for zoning." Then it became clear that it hasn't worked where the value of the land is so high, not where you want to discourage development....It's confiscatory.

In addition, Linton found PDR to offer many positive advantages:<sup>45</sup>

It provides the farmer with everything he needs to keep going: he continues to own his land, yet realizes his equity. It allows the farmer with limited finances to purchase land {from a nonfarmer who sold his DRs to the county and wants to unload the land which then is worth only its value for agricultural use}. It gets the speculators out, and it makes sure that the County is not a landlord {one option discussed in the early 1970's was to buy the land outright and then lease it to farmers}.

## 2. Winning Legislative Approval

In order to fund the purchase of development rights, Klein intended to sell 30-year general municipal bonds. But the authorization of such bonds required the votes of two-thirds of the 18-member County Legislature. Obtaining that extraordinary majority proved to be difficult. While all of the DRs purchases were planned for the still largely rural East End of the County, more than 90 percent of the population and 16 of the 18 legislators came from the West End. Moreover, six of those 16 represented legislative districts which were partially or entirely in a financially troubled special sewer district. Many of their constituents lobbied them to oppose the farmland preservations project as another real estate tax burden on top of an already intolerable situation for property owners.<sup>46</sup> Only one of those six decided to support the farmlands program, doing so with evident reluctance,<sup>47</sup> and after reportedly receiving assurances from Democratic colleagues in the legislature that they would support financial measures to assist the special sewer district.<sup>48</sup>

Other reluctant West End legislators were also persuaded to vote for the bond resolution, and it passed with just one vote to spare on September 8, 1976.

Also contributing to this narrow victory was reportedly the desire of certain Democratic members of the Legislature to steal credit for enacting the program from Klein. Thanks largely to the Watergate scandal of 1972-74, Democrats won control of the County Legislature in the fall 1975 elections. They lost control again in 1977, but in the meantime came the key September 8, 1976 vote authorizing the sale of bonds to finance the first round of DRs purchases. Ten Democratic legislators voted for that bonding resolution, and nine of those ten votes were indispensable. The resolution needed 12 votes to pass (a two-thirds majority), and only three Republicans would support it.



However, two or three of those Democratic votes were reportedly obtained only because their party was in the majority and its leaders wanted to flex the party's political muscles and also embarrass the Republican County Executive, John Klein.<sup>49</sup> When Republicans were in the majority, 1974-75, he had been unable to fund the PDR program. By voting for it in September 1976, the Democrats could "take a leadership position -- and the credit -- for the farmlands program...."<sup>50</sup>

There was more to the County Legislature's funding of the PDR program, however, than just inter-party rivalry. A sizable amount of public support developed and was expressed in the media and via lobbying of legislators. By the summer of 1976, the various support groups formed an umbrella organization, the Save Our Farms Committee, which then represented about 30 separate environmentalist groups, six local government bodies (village and town boards), and 28 civic associations.<sup>51</sup>

The single most important member of this coalition was probably an environmentalist organization called the Group for America's South Fork.<sup>52</sup> Financed in large part by summer people from the New York City area, the Group focuses on the conservation of the natural beauty and other resources of a narrow expanse of land (or "Fork") extending from the Hamptons to Montauk Point, along Long Island's southern shore. Its leadership welcomed Suffolk's PDR program for its potential for protecting scenic farmland and, thus, also limiting population growth on the Fork.<sup>53</sup>

#### H. Paying for the Program

The fiscal costs of Suffolk's PDR program fall into three general categories: payments to landowners for their DRs, the costs of bringing about the DRs sales (publicity, consultants, appraisals, surveys, title searches), and expenditures on enforcing the deed restrictions. Table 12-2 breaks down the first two kinds of costs. Table 12-2 understates costs in that interest on the bonds used to fund the program is not included. Lines 2 through 8 of that table lay out the appraisal, administrative and other costs beyond what is paid to landowners for their development rights. Suffolk's experience indicates that these other expenditures (additional to those for DRs, themselves) can be high. Line 9 shows them to have averaged \$167 per acre during Suffolk's first phase of purchasing.

### IV. EFFECTIVENESS OF THE SUFFOLK PROGRAM

#### A. Amount of Land Protected

The designers of Suffolk's PDR program had hoped that two or three rounds of purchasing would protect 12,000 to 15,000

Table 12-2

COSTS OF PURCHASING DEVELOPMENT RIGHTS  
 PAYMENTS TO LANDOWNERS AND COSTS OF EFFECTING SALES  
 SUFFOLK COUNTY PROGRAM: FIRST PHASE  
 1975-79

1.	Payments to landowners	\$9,284,000
	(a. Number of acres purchased)	(3,193)
	(b. Average cost per acre)	(2,908)
2.	Appraisal costs - total	343,300
	(a. First round of appraising, July and August 1975)	(197,300)
	(b. Second round, February - September 1977*)	(146,000)
3.	Fees to engineers	64,000
4.	Fees to surveyors	98,000
5.	Title guarantee company	38,000
6.	Bonding attorneys	35,000
7.	Administrative costs (work of County employees on program, early 1974 through October 1979)	100,000
8.	Other	1,000
(9.	Cost per acre other than payments to landowners and the expenditures for the second round of appraisals*)	(167)
<hr/> 10. Total costs (categories 1 through 10)		<hr/> \$9,963,300

SOURCE: Office of the County Executive, Suffolk County

\* The extraordinary second round of appraisals of the same parcels was undertaken after a general decline in real estate market values made the results of the first round appear to be no longer valid.

acres or about a quarter of the County's remaining farmland.<sup>54</sup> They wanted to protect enough land so that a still very significant farming sector would not decline into insignificance. However, by the end of 1980, almost six years after the first set of bids had been received, Suffolk's program had enrolled only 3,214 acres, consisting of 51 separate parcels.<sup>55</sup> In July 1980, the County Legislature had authorized appraisals of an additional 61 properties, in preparation for a second round of purchases. However, an economic downturn in Suffolk had the two consequences for the program of (1) making DRs purchases less urgent, since it appeared unlikely that for the foreseeable future much farmland was in jeopardy of development, and (2) diminishing the tax revenues available for less-than-urgent-projects.

John Klein and other program supporters had hoped for more than 3,800 acres of land to be protected under the first round of purchasing. But the bonding resolution passed in September 1976 had called for only that much land to be enrolled; the resolution listed 60 specific parcels, whose combined acreage was 3,883.<sup>56</sup> However, agreement of purchase terms could not be reached with the owners of ten of them. The other 50 on which negotiations were successful totaled 3,193 acres. And to this group of parcels the County added a 51st, a 21-acre tract which it owned and decided to commit to the program rather than sell to the highest bidder with the development rights intact.

As Table 12-2 indicates, the DRs to the 50 privately owned parcels cost the County in payments to the owners \$9.3 million. The September 1976 bonding resolution had provided for spending as much as \$21 million, but less than half of that was needed because (1) land market prices slumped in 1977-1978 compared to earlier in the 1970s and the DRs purchases were based on current appraisals and (as discussed just above) (2) sale agreements could not be reached with owners of ten of the initial group of 50 parcels.

#### B. Clustering of the Protected Parcels of Farmland

Since the initial and, perhaps only phase of Suffolk's program depended on landowners' voluntary cooperation (i.e., County officials did not use eminent domain to make sure that sizable, contiguous blocks of land emerged from the purchasing process), there was the danger that the protected land would amount to a scattering of small "islands," which, because of their sizes and isolated positions, might not be viable for agriculture over the long term. As discussed above in Section IIIF.1, County officials tried their best to achieve sizable clusters. The largest one realized was a 17-parcel block in Riverhead Town which comprised 1,289 acres or about 40 percent of the Phase One total.<sup>57</sup>



Other large groupings might have been possible, but a number of clusters were diminished for the largely "technical" reasons discussed above also in Section III F.1, that is, owners of some clusterable land has elected to be paid in installments, the County was not allowed to proceed with its scheme for deferred payments, and it decided to drop from consideration in Phase One all those parcels whose owners had preferred installment payments. However, many or most of those owners would have settled for lump-sum payments if that had been the only method. The problem was that the County felt it could not spare the time to resurvey them. In other words, clustering was not obstructed by lack of landowner interest; enough of them owning contiguous parcels were willing to sell their DRs to the County.

These obstacles to greater clustering under Phase One did not reappear for Phase Two. As discussed above, over 13,000 acres were offered for consideration in the second round; and all those bids were solicited on the condition that payments be in lump sums. The main obstacle since then has been the lack of political will within the County Legislature to fund a second round.

C. The Extent to Which the Protected Farmland had been in Jeopardy of Being Developed

The political will to purchase the DRs to farmland may be seriously sapped if critics can credibly claim that the land being considered for protection is in no foreseeable jeopardy of being converted out of agricultural use. As discussed earlier in this case study, developer and speculator interest in Suffolk farmland began to wane in 1976, and by the time DRs purchases started in 1977, very few of the 50 parcels appear to have been in any short-term jeopardy of being developed. Over the longer term, however, many or most of the 3,193 acres purchased under Suffolk's Phase 1 probably would have been in jeopardy. About two-thirds of the land included in the program had been owned by nonfarmers when the DRs purchases were made.<sup>58</sup> While some of these nonfarmers were heirs of farmers, most had bought the properties for investment purposes, expecting that their land would either be developed in the short run or have a sufficiently bright future to appreciate in value and thus justify their continuing to hold it. They were wrong in these expectations for the second half of the 1970s. However, the 1980s might see enough renewed growth in eastern Long Island's economy that the same parcels would again become attractive for development purposes (except, of course, the County now holds the DRs to them). In other words, having once attracted investor dollars, they were probably more likely to be the kinds of parcels which would interest investors than land which had not been subject to speculative buying in the early 1970s.

D. Danger that, in the Absence of Further Rounds of Purchasing, the Parcels Already Protected Will Become Unviable?

Let us say that development pressures again become strong in Suffolk, but that the County decides against further significant-sized purchases of DRs or some other effective means to protect farmland from conversion. Do the farm parcels protected under Phase One risk becoming isolated tracts, surrounded by development and hence, no longer viable for agriculture? To obtain insights on this question, six farmer participants in Phase One were asked: "If your farm became one of the last ones in the area, and the nearby fertilizer, seed, and other suppliers closed down for lack of customers, could you continue to farm here?" and "If you had subdivisions develop on all sides of you, could you continue to farm?" All six farmers responded positively to the first question (such as with: "If I couldn't go to Riverhead {the county seat} to get my tractor fixed, I'd go some place else. George Reeve used to farm in Vermont, where he was 60 to 70 miles from a dealer"; "We'd have to lay in more supplies and travel more to get some"). To the second question -- on surrounding subdivision development -- there was less agreement. However, three of the six believed that they could continue to farm:

They {the residents} would complain about the irrigation pumps' noise, the drifting chemical spray, and the dust if there's no cover crop. But that wouldn't stop me. I was here first.

I'd tell my friends {neighboring landowners who would develop the subdivisions or sell to a developer} to put into the contract to sell that there be no complaints about noise, dust, odor ...or about airplanes or helicopters flying around {for crop-spraying purposes}.

Our whole farm is surrounded by houses and had been before the program. They make good customers for our {farm} stand, and their kids work for us. There have been occasional problems of kids stealing and complaints about pesticides. But we're careful and we've had generally positive relations with our neighbors.

These responses do not demonstrate that there are no serious difficulties, only that they may be surmountable.



E. Assistance to Farmer-Participants in the Program

Interviews with the same six farmer-participants in the Suffolk County PDR program were used to explore the extent to which such programs can genuinely assist farmers.

1. Reducing Property Tax Assessments

The experience of the six was that property tax assessments did go down for the tax year following the sale of DRs, reflecting the reduction in their land's market value due to removal of the right to develop. However, at about the same time farmland owners in their part of Suffolk began to take advantage of New York's agricultural districts law, which provides for farm-value assessment for real estate taxes if owners commit their land to agricultural use for eight-year periods (see Case Study No. 2). In other words, they could have obtained about the same tax relief without selling their DRs.

2. Helping with Indebtedness and/or with Acquiring Land or Equipment

Two of the six farmer-participants in the Suffolk program who were interviewed spent most or all of the proceeds from their DRs sales on paying off debts. They had suffered considerable losses with their potato growing. Two others reported using their proceeds to pay for additional land, and a fifth farmer put most of his into a new metal farm building (the sixth would not explain how he disposed of his money from the program).

The program has helped also non-participant farmers-- by making available for potential purchase a pool of more affordable farmland, that is, parcels stripped of their development rights and, hence, much cheaper in market value than comparable land with the right to develop intact. As two-thirds of the land protected under Phase One were owned by nonfarmers, it seems likely that most of that land will eventually be sold to farmers, since farming is the only productive use to which the parcels can now be used. As of the end of 1980, three hundred ninety of those acres had already been purchased by farmers.<sup>59</sup> These transfers helped to undermine the criticism that Suffolk's program was helping "too many" speculators. The initial impact was mostly to benefit nonfarmers, but the longer-run consequences include these farmer-benefiting ownership changes, as well as the protection -- perhaps in perpetuity -- of good farmland from conversion out of agricultural use.



V. CONCLUDING OBSERVATIONS

Suffolk's experience with the PDR approach to protecting farmland suggest that

- (a) landowner interest can be high, both in the total acres offered for possible DRs purchase and in the degree of clustering that is feasible;
- (b) landowners' cooperativeness can be high also in terms of accepting County-arranged appraisals and otherwise agreeing to DRs sales; for only ten of the initial 60 parcels recommended for purchasing did the County and the owners fail to reach agreement;
- (c) there may be significant side-benefits, especially in the transfer of ownership of land from speculators to farmers;
- (d) the administrative costs of PDR program may be high (\$167 per acre of land purchased under Suffolk's Phase One, not counting enforcement costs); and
- (e) the political will to support an initial and follow-up rounds of purchases may be very difficult to muster; Suffolk's first round was funded with only one County Legislator's vote to spare, and launching a second round is still in doubt.

## NOTES

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2. U.S. Department of Commerce, 1974 Census of Agriculture, Vol. 1. Part 32, New York State and County Data, Pt. II, pp. 8-9, and Pt. IV, p. 289.
3. Cooperative Extension Service of Suffolk County, Farmland Owners Guide to Farmland Preservation (Riverhead, N.Y., no date), p. 1.
4. William G. Leshner and Doyle A. Eiler, Farmland Preservation in an Urban Fringe Area: An Analysis of Suffolk County's Development Rights Purchase Program (Ithaca, New York: Department of Agricultural Economics, Cornell University, 1977), p. 3.
5. Current Population Reports, Series P-25, op.cit., and the 1970 Census of Population.
6. John V.N. Klein, County Executive, Report of the Suffolk County Agricultural Advisory Committee to the Suffolk County Legislature (Hauppauge, N.Y., March 1974).
7. Robert E. Coughlin and Thomas Plaut, "Less-than-fee Acquisition for the Preservation of Open Space: Does It Work?" Journal of the American Institute of Planners, 44 (October 1978).
8. John V.N. Klein, "Speech by Suffolk County Executive John V.N. Klein before the Concerned Citizens of Montauk, New York, July 15, 1978" (mimeograph copy, Office of the County Executive, Hauppauge, N.Y.).
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13. William Lockwood, "Suffolk County Acquires Farmland Development Rights," Right of Way (Official Publication of the American Right-of-Way Association), 26 (September 1979): 33-36.
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17. Ibid.
18. Interview, Suffolk County, December 1979.
19. Interview, Suffolk County, June 1980.
20. Craig A. Peterson and Claire McCarthy, "Farmland Preservation by Purchase of Development Rights: The Long Island Experience," DePaul Law Review, 26 (1977): 458.
21. Interviews with an officer of the Cooperative Extension Association of Suffolk County, December 1979.
22. Interviews with two farmer leaders in Suffolk, December 1979 and June 1980.
23. Interview with that farmer, June, 1980.
24. John V.N. Klein, Report of the Suffolk County Agricultural Advisory Committee, op. cit., p. 5.
25. Ibid., p. 4.
26. Ibid., p. 3.
27. One of the Select Committee's members recalls the asking prices for western town bids to have been over \$10,000 per acre. Interviews, December 1979.
28. Interview with an extension specialist, December 1979.
29. Interview with a member of the Selection Committee, December 1979.



30. Press release, Office of County Executive John V.N. Klein, September 28, 1978. Office of the County Executive, Peter F. Cohalan, Open Space Policy: Report to the County Legislature (Hauppauge, N.Y., May 1980).
31. Open Space Policy, op.cit., p. IV.
32. Interviews with one member and with another person who sat in on the meetings. December 1979.
33. Interview with a member of the Select Committee, December 1979.
34. Ibid.
35. Ibid.
36. Ibid.
37. Ibid.
38. Office of the County Executive, Suffolk County, "Farmlands Program: Phase I - Completed; Phase 2 - Future Sites - Bid Stage" (a map).
39. Interview with Riverhead's Supervisor, December 1979.
40. Interviews with two participants in the 1979 Select Committee meetings, December 1979.
41. Ibid.
42. John V.N. Klein, County Executive, Farmlands Preservation Program: Report to the Suffolk County Legislature (Hauppauge, N.Y., 1973), p. 3.
43. Interview with a member of the Advisory Committee, December 1979.
44. Interview with Linton, December 1979.
45. Ibid.
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47. Newsday, September 9, 1976.

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53. Interview with two officers of the Group, December 1979.
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55. Interview with a staff member of the Office of the County Executive, Suffolk County, October 1980.
56. Ibid.
57. Ibid.
58. David Newton, "Saving Prime Farmland", op. cit.
59. Interview with a staff member of the Office of the County Executive. Suffolk County, October 1980.

#### IV. TRANSFER OF DEVELOPMENT RIGHTS





## Case Study No. 13

### THE TRANSFER OF DEVELOPMENT RIGHTS: BUCKINGHAM TOWNSHIP (BUCKS COUNTY, PA.) AND OTHER EXPERIENCES

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THE TRANSFER OF DEVELOPMENT RIGHTS: BUCKINGHAM TOWNSHIP  
(BUCKS COUNTY, PA.) AND OTHER EXPERIENCES

by

Robert E. Coughlin

I. A SUMMARY OF EXPERIENCE AND FINDINGS

Judging by the vast literature<sup>1</sup> the transfer of development rights (TDR) is the most important innovation in land use control in the last several decades. It is, in fact, innovative and suggests great possibilities for restricting development in certain areas, transferring it to other areas, and compensating the owners through the private land market for the restrictions put on their lands.

The concept builds logically on the idea that land ownership consists of a bundle of rights. Two types of rights are identified: the right to use the land for low-intensity, "natural" uses, such as farming, and the right to develop it for urban structures. The concept of severing the development rights from ownership has been established through purchase of development rights programs through which the public purchases the development rights and retires them. TDR adds the idea that the development rights may be severed from a given parcel of land by selling them, to a private developer, who would transfer them to another parcel where the development is to be realized (Figure 13-1).

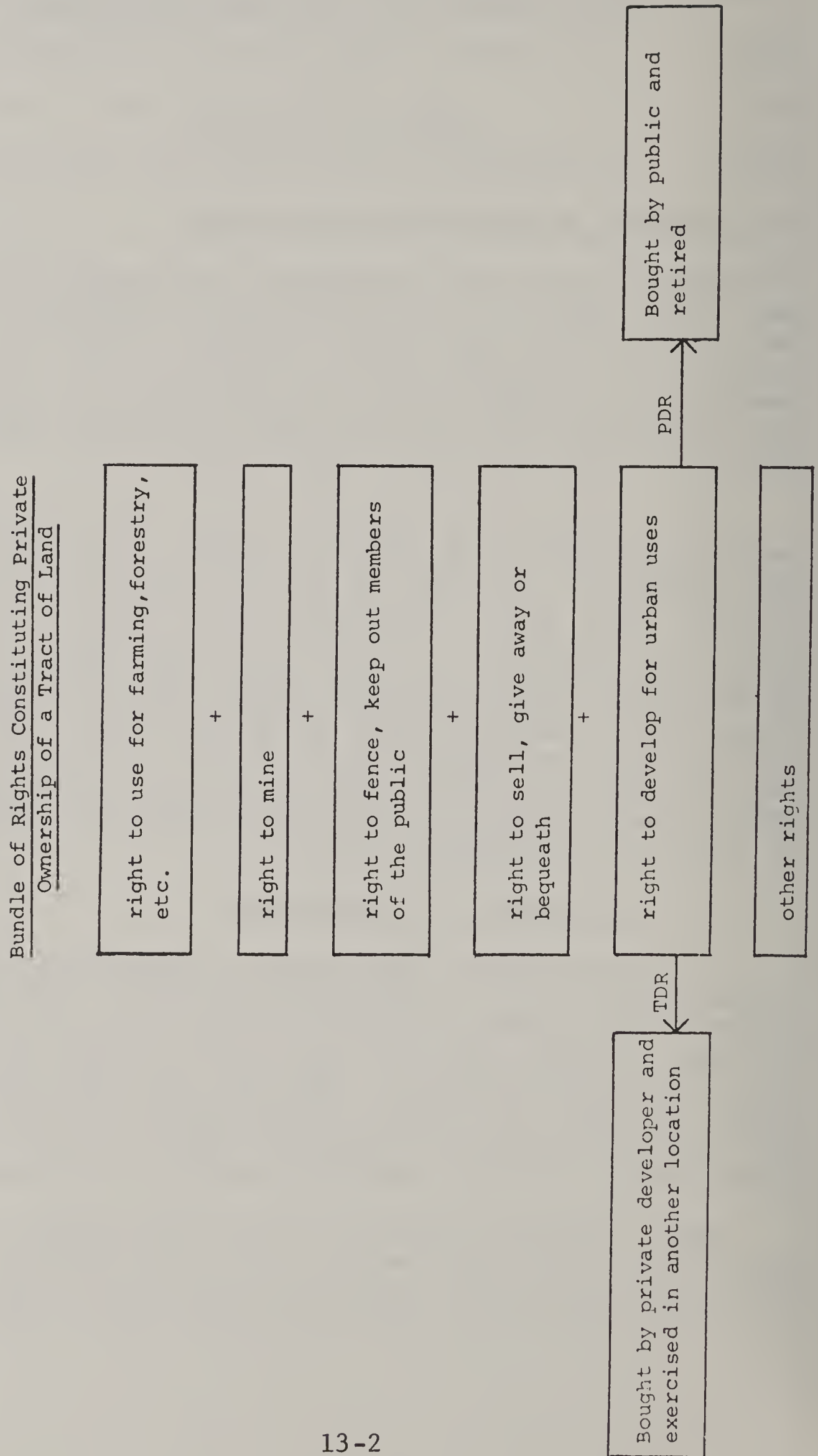
A. The Elements of a TDR System

In the classic TDR system, a preservation district is identified, as is a development district. Development rights are assigned to owners of land in the preservation district, but the owners of land in the preservation district are not allowed to develop. They may sell their development rights to owners of land in the development district who may use the newly acquired development rights to build at a higher density than is normally allowed by the zoning.

Such a mandatory model has never been adopted for farmland or open space preservation in the United States. Instead, all adopted systems are voluntary, that is, the owner of land in the preservation area may develop his land at low density

Figure 13-1

HOW THE BUNDLE OF OWNERSHIP RIGHTS IS AFFECTED BY PURCHASE OF DEVELOPMENT RIGHTS AND TRANSFER OF DEVELOPMENT RIGHTS



or sell all or some of his development rights.

Ten municipalities and two counties have been identified which have devised TDR systems for the preservation of farmland and other open space.<sup>2</sup> Major characteristics of their ordinances are summarized in Table 13-1, beginning with the ordinances which most closely resemble the classical model and proceeding to those ordinances which lack one or more of the features of a true TDR system. All 12 ordinances permit transfer to non-adjointing properties, a fundamental feature which distinguishes true TDR systems for cluster, PDR, or PUD systems. Nine of the twelve permit the development rights to be completely severed and sold by themselves. The remaining three (Chesterfield, Hillsborough, and Windsor) require that the developer purchase both the preservation tract and the development tract in fee and then put the preservation tract under a restrictive easement (in Chesterfield only) or deed it to the Township. Thus, these ordinances limit the government's role to approval of private arrangements. Since technically they are not true TDR systems, they are known as Transfer of Development Credit systems.

Most of the ordinances make provision only for transfer of rights to build dwelling units in residential zones. The Buckingham ordinance, however, specifies that rights can also be transferred to an industrial zone and used for the construction of industrial space (1,000 sq. ft. of industrial space for every 0.35 development right).

Other elements of TDR systems are also identified in Table 13-1. These include incentives for landowners and developers and the specification and design of the preservation and development districts. These elements will be discussed below.

#### B. Incentives

The ordinances generally recognize that in order for a transaction to be completed, three conditions must be met. The owner of land in the preservation area must have an incentive to sell his rights for transfer rather than to exercise them by developing his land. The developer must have an incentive to acquire rights rather than to build under the usual density restrictions of the existing zoning. Finally, neighbors of the potential development must have some assurances that excessive densities will not result from the transfer.



Table 13-1

## COMPARISON OF PROVISIONS IN TDR ORDINANCES APPLIED TO AGRICULTURAL AREAS\*

	Preserv. Tract May Remain in Private Ownership	Development Rights Separable Entity	Incentive for Landowner to Sell	Limitation on Development Incentive <sup>a</sup>	Separate Pre- servation and Development Districts Specified in Advance	Rights can be Transferred from Residential to Non-Residential Zones
Buckingham Twp. Bucks Co., Pa.	Yes	Yes	Yes	Yes	Yes	Yes
Montgomery Co., Md.	Yes	Yes	Yes	Yes	Yes	No
Birmingham Twp. Chester Co., Pa.	Yes	Yes	Yes	Yes	Yes	No
Calvert Co., Md.	Yes	Yes	No	Yes	No	No
Town of Eden Erie Co., N.Y.	Yes	Yes	Yes	No	Yes	No
Town of Sunderland Mass.	Yes	Yes	Yes	No	Yes	No
Upper Makefield, Bucks Co., Pa.	Yes	Yes	No	Yes	No	No
Kennett Twp., Pa.	Yes	Yes	No <sup>f</sup>	Yes	No	No
Town of Southampton Suffolk, Co., N.Y.	No	Yes	No	Yes	Yes	No
Town of Windsor Conn. <sup>e</sup>	No	No	No	Yes <sup>c</sup>	No	No
Chesterfield Twp. Burlington Co., N.J. <sup>e</sup>	Yes	No	No	Yes	No <sup>d</sup>	No
Hillsborough Twp. Somerset Co., N.J. <sup>e</sup>	No	No	No	Yes	Yes	No

Notes to Table 13-1

- \* Some development is allowed in the preservation district of jurisdiction and each ordinance and makes provision for voluntary transfer. Transfer is not mandatory under any of the ordinances.
- a All ordinances provide density increase incentive for development.
- b Tract in Development District must be at least 20 acres.
- c Maximum per application is 50 dwellings for single family zones and 100 dwellings for Design Development Zones.
- d Preservation District must be at least 25 acres.
- e Windsor, Chesterfield, and Hillsborough ordinances do not treat development rights as a completely separable entity and therefore are known as Transfer of Development Credit ordinances.
- f There is some incentive if land is within a Planned Residential Development.

Rather than rely only on the price offered by the developer to provide the necessary incentive for the landowner to sell his rights, five of the ordinances (i.e., Buckingham, Eden, Montgomery, and Windsor) allow the landowner in the preservation district to transfer a larger number of rights than the existing zoning would allot to his land. For example, under the most intensive type of development permitted in Buckingham's preservation area, 0.5 DU per acre is allowed, but one full right per acre may be transferred to the development district. Typically the increase in rights is 100 percent, but in two ordinances (Buckingham Township and Montgomery County) reaches 400 percent. Four of the ordinances (Birmingham, Hillsborough, Southampton, and Upper Makefield) do not provide any increase in rights to the landowner if he transfers them rather than building on his property in the preservation district.

All enacted TDR ordinances include a density incentive for the developer. These incentives, as detailed in Table 13-2, generally consist of an increase in density of about 100 percent, but in Chesterfield and under certain zoning districts in Buckingham Township, Birmingham Township, and Montgomery County range substantially higher. In absolute units the permitted increases range from about one DU per acre to 6.8 DU per acre. In Sunderland and Eden, however, no maximum is specified.

Too great a density increase incentive for the developer could result in requirements for roads, water, and sewers beyond planned capacities and generate opposition from neighboring residents. Therefore, as mentioned above, all but three ordinances specify the maximum density allowed, and most of the maxima are relatively small. Most would allow only for detached single-family densities. Townhouse densities could be achieved only in Buckingham Township. No ordinances (except those ordinances without a specified maximum) allow for apartment densities in the development areas.

The incentives provided in a TDR ordinance must function to improve the advantages which the land market and development economics afford to a transfer. The identification of sufficient incentives, therefore, requires careful analysis of market forces.

### C. Preservation and Development Districts

Most of the ordinances identify separate preservation and development districts. Generally, the districts are specified as coincident with particular zoning districts



(e.g., the Agricultural District), but the Town of Southampton ordinance identifies its preservation areas by specifying a number of environmental characteristics. Upper Makefield, Windsor, and Chesterfield do not specify separate districts. Therefore, although their ordinances could function to prevent development of some agricultural land, they might result in transfer of development to agricultural land if developers found it profitable.

Data on the size of the Development District relative to the Preservation District are available for three of the jurisdictions with TDR ordinances (Table 13-2). In Buckingham and Hillsborough, the development district is small relative to the preservation district (13.5 and 20.0 percent respectively). In Eden, however, it is nearly as large as the preservation district. Determination of the appropriate sizes for the districts requires a careful analysis of population growth and housing demand.

#### D. Enactment of a TDR Ordinance

Considering the widespread interest and extensive literature on TDR, it is surprising that only a dozen TDR ordinances have been enacted for the purpose of preserving farmland and open space and these have all been in a limited section of the northeast. There are undoubtedly a number of reasons for this. One is the unfamiliarity and inherent complexity of the concept. Local governments tend to be very conservative in their actions. The diffusion of new ideas and methods are extremely slow unless they have proven instantly and unquestionably successful. A second reason is the uncertainty of the results of a TDR program. There is no assurance that enactment of a TDR program will be followed by its use. These aspects will be discussed more fully in the next section.

A number of additional concerns have been expressed by a township supervisor of East Pikeland Township (Chester County, Pa.) which considered but rejected a TDR program.<sup>2</sup> Enactment of a TDR program poses some threats to residents and local officials. Residents in the development area may be opposed to the increased development which a successful TDR program would shift to their neighborhoods. Clearly, this increased development is the cost of a TDR program as opposed to a PDR program. It is a cost which is borne by residents in a particular part of town and which affects their residential environment and possibly their taxes. Since development

districts tend to be delineated to include areas of the jurisdiction which are already more dense than average a substantial number of residents may be affected, and their opposition may constitute a significant political problem. In Upper Makefield Township the original proposal for including the R-2 zone in the development district was opposed successfully by the R-2 zone residents.

Residents of a proposed development area also may be concerned that the increased development in their neighborhood may indicate higher land values which will be reflected in their property assessments. Residents of Eden, N.Y. (which enacted a TDR ordinance) as well as of East Pikeland Township, Chester County, Pa. (which did not) were concerned about such tax effects. A second worry is that if development rights are purchased and held for speculative purposes, without being attached to any property, they may not be reflected on the tax rolls and unless the jurisdiction substantially alters its assessment procedures, tax revenues will drop, which in turn may require an increase in the tax rate. Unless very large numbers of rights were purchased for speculation, however, the effects feared are not likely to materialize, particularly since property assessments in preservation areas tend to be relatively low.

Some of the residents in more densely settled neighborhoods may be somewhat resentful of the beneficial effects of a TDR program on those who now own ample acreage. Once these landowners sell off their rights and protect their land permanently, they may be able to sell the fee to their properties at undiminished or even increased prices to wealthy people who are seeking a rural environment, free of the threat of intruding development.

Finally, there tends to be a lack of confidence in the ability of local governments to maintain a policy or program over a long period of time under changing political pressures. Residents may feel that once some landowners have sold their development rights the government may abandon the program or even assign additional rights to the preservation area, making the restricted land once again available for development.

Developers, who may not be voting residents of the local jurisdiction but who may have an important effect on the decision to enact a TDR ordinance, may not be convinced that the ruling body will encourage any development, even in the development district. Or even if they are convinced about the existing ruling body, may be concerned that a new administration will have contrary policies.



### E. Completed TDR Transactions

Although none of the programs have been authorized for very long, in aggregate, the 12 TDR ordinances have been in force for 47 program-years. During that time only five transactions, involving three developments have been completed. These transactions resulted in the transfer of 107 development rights and the preservation of 184 acres (Table 13-3). Completion of an additional transaction (in Eden, N.Y.) was anticipated in September 1980 when financing for the second stage of the development project was expected to be made available.

Some of these transactions have involved supporters of the TDR concept rather than simply dispassionate developers. For example, in Buckingham the developers and land were brought together in part through the efforts of a county planning staff member and the development rights were sold by the president of a civic association who had fought for the passage of the TDR ordinance. In Hillsborough, a real estate agent, who was active in civic support of the TDR concept played a strong role in convincing the developer of the advantages for his project. The help of such interested people may very well be necessary in order to demonstrate that a revolutionary concept like TDR can be made to work. The disappointing thing is that almost no others who have not had a prior interest in TDR have concluded that TDR would be of such financial advantage to them to warrant participation.

It would appear, however, that much less development has occurred in preservation areas than in development areas of jurisdictions studied (Table 13-2). This growth in the development districts can probably be explained by their greater accessibility and the availability of utilities, by existing zoning which normally permits house lots in the development districts and only larger tracts in the preservation areas, and by other market factors. The existence of the TDR option can not be credited for the differential rate of development.

There are a number of possible reasons for the lack of use of enacted ordinances:

1. Incentives for landowners to sell not strong enough to induce him to sell (and to offset his beliefs that he may be able to get a better price in future or that zoning will be relaxed).
2. Incentives for developer not great enough to compensate for additional cost and complication of transfer. (To be sufficient, incentives may have



Table 13-2

AREA AND AMOUNT OF DEVELOPMENT IN PRESERVATION AND DEVELOPMENT  
DISTRICTS, SELECTED TOWNSHIPS WITH TDR ORDINANCES

	<u>Buckingham</u>	<u>Hillsborough</u>	<u>Eden</u>
<u>Areas in Districts</u>			
Acres in Preservation Districts	13,000 Ac.	23,933 Ac.	13,296 Ac.
Acres in Development District	1,753 Ac.	4,900 Ac.	12,268 Ac.
Development District as percent of Preservation District	13.5%	20.0%	92.3%
<u>Recent Development</u> <sup>1</sup>			
In Preservation District			
Acres	50 Ac.	100 Ac.	0
Dwelling Units	68 DU	350 DU	0
In Development District			
Acres	187 Ac.	200 Ac.	8 Ac.
Dwelling Units	258 DU	1,627 DU	48 DU
<u>Recent Development Relative to District</u>			
In Preservation District			
Ac. Dev./100 Ac. in Distr.	0.4	0.4	0
DU/100 Ac. in Distr.	0.5	1.5	0
In Development District			
Ac. Dev./100 Ac. in Distr.	10.7	4.1	0.1
DU/100 Ac. in Distr.	14.7	33.2	0.4
<u>Indicators of Demand for Developable Land in Township</u>			
Pop'n per ac. ('77)	.35	.45	.32
Pop'n Growth '70-'77			
per acre	.11	.14	.02
percent	45.0	43.7	6.5

<sup>1</sup> Developed since March 1975 for Buckingham Township, and January 1977 for Hillsborough Township and Eden.

## SUMMARY OF COMPLETED TDR TRANSACTIONS

13. BUCKINGHAM

	Year Enacted	Number of Transactions	Year	Completed Transactions*	
				Number of Rights	Number of Acres Preserved
Southampton, N.Y.	1972	1	1977	18	36
Sunderland, Mass.	1974	0	----	0	0
Buckingham Twp., Pa.	1975	2	'77, '78	19	38
Hillsborough Twp., N.J.	1975	1	1979	30	70
Chesterfield Twp., N.J.	1975	0	----	0	0
Upper Makefield Twp., Pa.	1975	0	----	0	0
Windsor, Conn.	1976	0	----	0	0
Eden, N.Y.	1977	*	1979	*	*
Birmingham Twp., Pa.	1978	0	----	0	0
Calvert County, Md.	1978	1	1980	40	40
Kennett Twp., Pa.	1978	0	----	0	0
Montgomery Co., Md.	1980	0	----	0	0
Total		5		107	184

\* Southampton - Transaction in 1978, inaccessible back end of long narrow tract.

Buckingham - Development rights sold by active supporter of ordinance.

Hillsborough - A developer provided impetus for passage, but extended time for approval forced him to withdraw his development proposal.

A second developer's proposal was completed in 1978.

A third proposal was withdrawn.

Eden - Transaction in process. Expected completion September 1980 with financing from Farmers Home Administration.

Calvert Co. - Forty development rights have been sold to a developer, but as of September 1980, he had not yet used them.

to include assurance that local government is committed to facilitating development in the development area.)

3. Demand for development not great enough to justify higher densities (i.e., incentives provided for developers are irrelevant).
4. Opposition by neighbors to development tract too great.

The experience reviewed indicates no situation where developers had tried without success to purchase rights from landowners in the preservation district. Therefore, the first reason has not come into play.

The experience does not make it clear whether the failure of developers to make use of TDR options is due to insufficient incentives (2) or the fact that there is no market for the higher density development which the incentives would make possible (3). However, one attempted use of TDR by a developer in Hillsborough was aborted because of long delays in the process which were so costly as to outweigh the advantages of the higher density permitted. In Buckingham Township, the failure of developers to use the TDR provisions can be traced to the market which indicates a strong demand for houses on large lots and virtually no demand for higher density development. In addition, it is not possible to realize the highest densities which are permitted, since sewers are not yet available.

In the following section, we shall examine in some detail the experience which Buckingham Township has had with TDR, and in the third section, we report briefly on the experience of several other jurisdictions.



## II. TDR IN BUCKINGHAM TOWNSHIP, PENNSYLVANIA

### A. Introduction

#### 1. The Context

Buckingham Township, encompassing 33 square miles, is located in Bucks County, Pennsylvania, within the Philadelphia Standard Metropolitan Statistical Area and about 26 miles from the center of Philadelphia. As of 1975, its population was 6,956--on average 211 persons per square mile. Much of the development is located in close proximity to the Buckingham Village center and in the northwest quadrant of the town which adjoins Doylestown, the county seat. Fifty-four percent of the land area is estimated to be occupied by agricultural uses. Residences account for 27 percent of the area, commerce and manufacturing for only 2 percent.

Through the 1960s between 20 and 40 houses were built in the township each year. This rate doubled in 1970, and over the next eight years an average of 124 houses were built per year. The total for 1979, however, was only 46, the smallest since 1969.

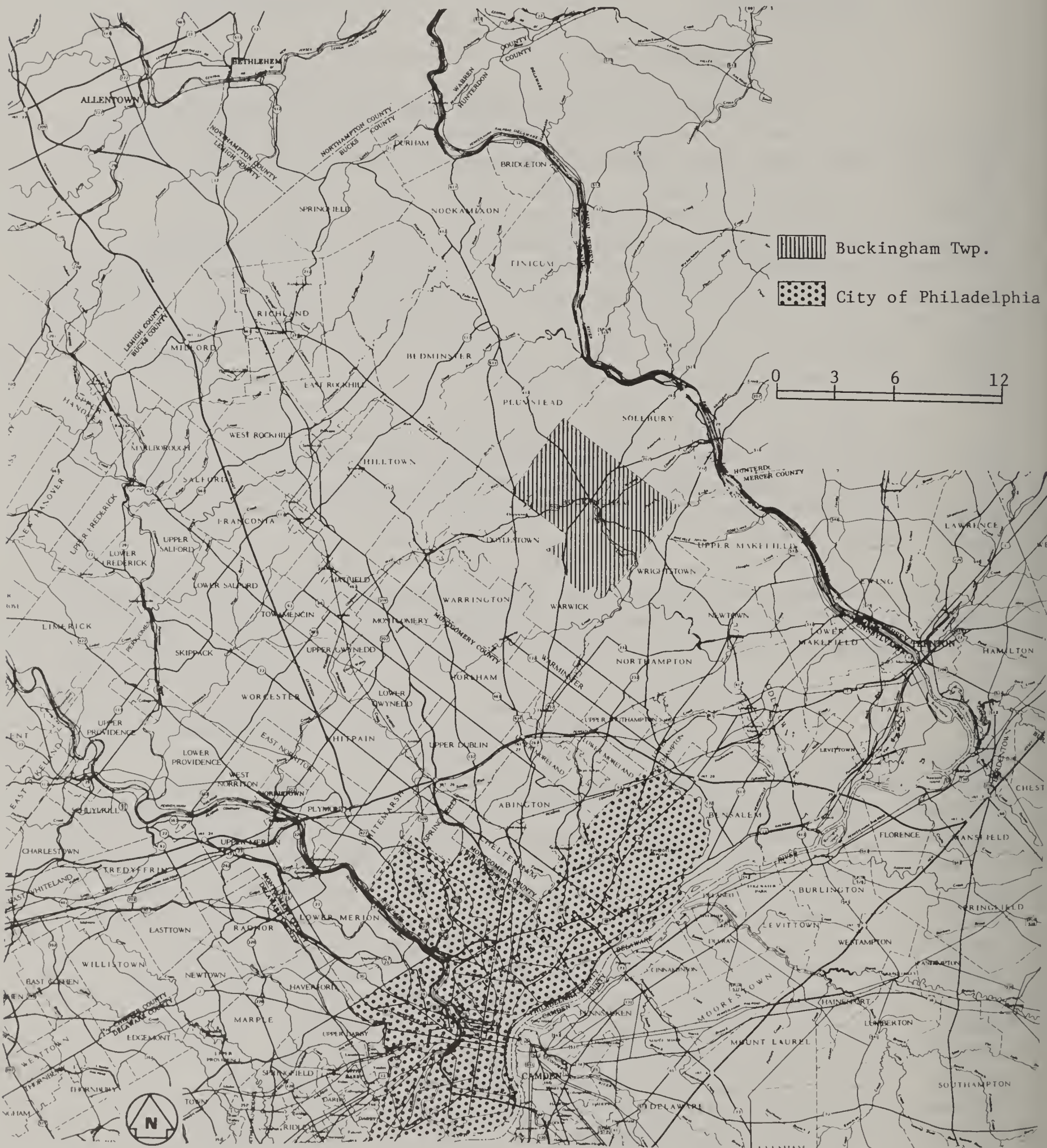
It has been estimated that 1,816 acres of farmland in the township were lost to development between 1967 and 1977. This loss represents one-eighth of the total available agricultural acreage.

There has been a significant change in the attitudes of the farming community over the past 40-50 years. As Miles Slack a Buckingham farmer puts it, when he was a boy the farmers worked hard but made little money, say \$500 or \$1,000 per year; but taxes (Federal, state, and local) were low and so were prices. They were happy. On a winter morning ten or twelve farmers would always be found at the village post office. The farmers don't get together like that for companionship now. They all want all the latest things--unlike a farmer of an earlier generation who would buy an automobile and make it do for a lifetime. Things began to change after the depression. Then no one could afford to have kids, so the little one-room schoolhouses around the township began to empty out. School consolidation came in and school costs and taxes went up. A farmer, who might have paid \$150 per year in taxes before, found his bill had suddenly jumped to \$500. After World War II taxes went to \$1,000 per year. When Miles was growing up, farmers could always outbid developers for land. Now it is the other way around.



Figure 13-2

THE GEOGRAPHIC SETTING OF BUCKINGHAM TOWNSHIP, BUCKS COUNTY, PA





Before the war there were many truck farmers in the area who sold their produce to small grocers. The rise of the supermarket changed that, because supermarket buyers couldn't be bothered with small producers. Now soy, corn, and other feed grains are the primary crops. There are also dairy and some poultry farms. Whereas an 80-acre property was sufficient for truck farming, 300-400 acres are necessary for field crops. Most Buckingham farmers now own 40-80 acres and rent the rest.

Over the past half dozen years, Buckingham Township has expressed its commitment to preserving its farmland, and has sought to implement a number of innovative programs to that end. A brief chronology follows:

Comprehensive Plan issued April 10, 1974 identifies preservation of agricultural land as a primary goal.

Seven developers challenge zoning ordinance and petition court for "curative amendments." (total of 8,141 dwelling units proposed).

Zoning ordinance, including TDR, enacted to replace rudimentary zoning ordinance--March 1975.

Paul Silver elected Supervisor, begins six-year term January 1, 1976.

First TDR Transaction--12 development rights sold by C. Iden, January 1977.

Donald Parker elected supervisor, begins six-year term January 1, 1978.

Verna Shmavoniam appointed Special Projects Coordinator with major responsibility for working with state legislature to develop agricultural preservation programs and to combat curative amendment challenges, March 1978.

Second TDR Transaction--seven development rights sold by W. Schmitt, August 1978.

Public hearings on Sect. 201 Sewer Plan, July 11, 1978 through November 19, 1979--series of 11 meetings.

SB 1008 is signed into law by Governor Shapp and becomes Act 1978-249. October 1978. The act sets up a procedure whereby a municipality can seige the initiative in preparing a curative amendment.



Zoning Ordinance amended October 1978. Reduces potential number of dwelling units in Development District from 5,978 to 2,967.

Purchase of Development Rights issue of Buckingham Township News, April 1979.

PDR Referendum for \$2,000,000 fails 5-1, May 1979.

An Agricultural Preservation Policy proposed to Governor of Pennsylvania by Buckingham Supervisors, October 1979.

Buckingham--1980, Booklet, in draft, November 1979.

Development Impact Tax imposed on all wage earners living in Buckingham and on all persons employed in Buckingham, December 1979.

As can be seen from this chronology, the transfer of development rights provision is but one of many efforts which Buckingham has made to preserve its agricultural land. The history which follows, therefore, is not limited to that of the transfer of development rights.

## 2. History of Efforts to Preserve Farmland

In the early 1970s as townships closer to Philadelphia became heavily suburbanized and development in Buckingham began to accelerate, a number of Buckingham people became active in their concern about the future of the Township. They grouped together as members of the already-established Buckingham Civic Association. Carol Hagen (the wife of the present vice chairman of the Planning Commission) and Curtis Iden (a real estate broker, who later sold 12 development rights from his own property) both served as President of the Association.

At that time the township's planning commission was generally in favor of development and were studying the adoption of a planned residential development (PRD) district and the installation of a sewer system. The PRD would have been a "floating" zone permissible anywhere in the Township. The Buckingham Taxpayers Association actively supported the sewer and PRD proposals. During a heated public meeting in May 1972, the Township Supervisors voted against the PRD proposal and all five members of the planning commission resigned on the spot. The supervisors appointed those who were most vocal in opposition to replace them.

The new planning commission was chaired by Bob Wallace (son of Henry Wallace, who once was Secretary of Agriculture) and included Paul Burger and George Hagen (respectively the current chairman and vice chairman of the Commission), Kenneth Fischer, and Leonard Crooke. The former members of the planning commission were appointed to the Sewer and Water Board.

After three heavily attended night public meetings on the proposed sewer plan, in which only two persons spoke in favor of the plan, the Board of Supervisors voted it down.

The new Planning Commission, realizing that the one-acre zoning which had been instituted in the 1950s as the solution to rapid development was no longer effective, decided to concentrate their initial efforts on restating the goals of the Township. Several subcommittees were set up with many members in addition to members of the Planning Commission. Following a process of consultation over one or two years, the Commission concluded that the first and most important goal was to preserve farmland.

a. The Township Comprehensive Plan

Once general goals for the Township had been identified, the Commission turned its attention to preparing a Comprehensive Plan, a Zoning Ordinance, and a Subdivision Ordinance. Paul Silver was appointed to a subcommittee to write the Comprehensive Plan report. The Plan was prepared during 1972 and 1973.

The Comprehensive Plan is a policy document which identifies seven goals:

- To protect and preserve the Township's agricultural industry.
- To protect and improve the natural environment and related amenities.
- To preserve and protect the historical character of the community that is reflected in its landmarks.
- To foster the further improvement of a well-integrated, rural/agricultural community containing a variety of land uses, primarily agricultural and residential, secondarily commercial and industrial.

To promote adequate, safe and sound housing for present and future residents of Buckingham Township.

To control the rate, magnitude, and location of growth within the Township, recognizing that massive or very rapid development will irreversibly alter the character of the community... Buckingham Township is part of a larger region, and consideration should be given to regional plans.

To establish... performance standards that will facilitate realization of the goals formulated here.

The Comprehensive Plan's land use plan is presented as Figure 13-3. In its barest essentials two types of area are delineated: the Development District, in which development is to be encouraged, and the agriculture and resource protection area, in which development is to be discouraged.

The Planning Commission voted to approve the Plan in April 1974, with George Hagen voting in opposition on the grounds that the Plan was not strong enough and lacked adequate information on the township's natural resources. The Supervisors adopted the Plan unanimously.

b. Civic Group Support

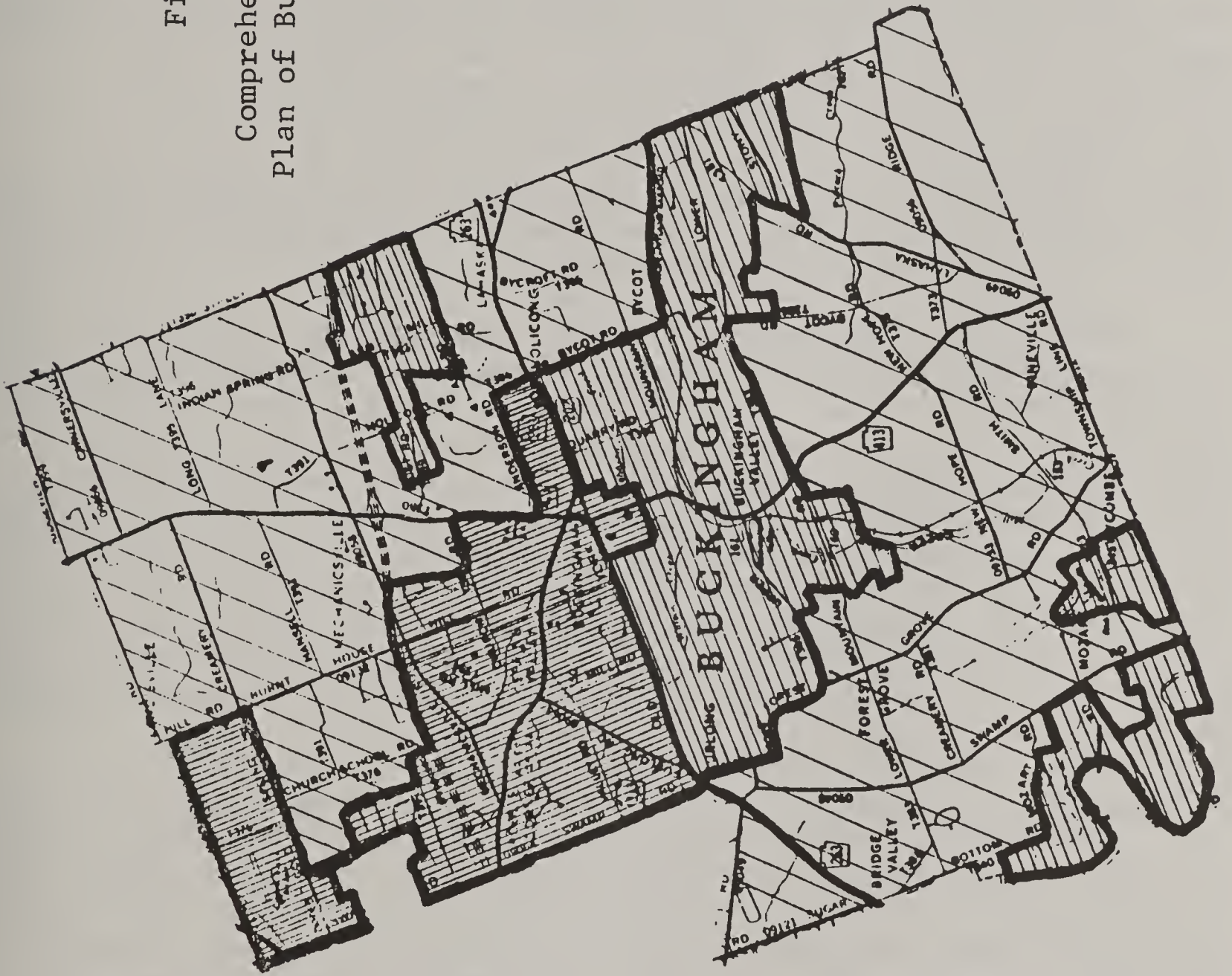
During this period, a citizen group called the Bucks County Land Use Task Force was organized. In contrast to the Buckingham Civic Association, the Task Force was designed to be political. Although most members were from Buckingham Township, the Task Force had a number of members from other Townships and allied itself with outside groups. Paul Silver and Donald Parker (both later to be elected Township Supervisors) and George Hagen at various times served as President. The Task Force became well informed on land use issues and during 1974-1975 was very active in spreading its views and working on political contests at both the township and the county level. In 1975 Paul Silver spent a great deal of time campaigning for Roger Bowers, who was an underdog running for County Commissioner, and less for himself in his campaign to become a Township Supervisor. Both Bowers and Silver were elected.

c. Enactment of a Zoning Ordinance Including TDR

Soon after the adoption of the Comprehensive



Figure 13-3  
Comprehensive Land Use  
Plan of Buckingham Township



agriculture

resource protection

development district



Plan a citizen committee, many of them farmers, was formed to investigate techniques for preserving agricultural land. This "Agricultural Committee" met on a weekly basis, with consulting support from the Bucks County Planning Commission. It examined public acquisition, preferential taxation, cluster zoning, and large lot zoning, but focused its attention on the development of a voluntary transfer of development rights provision as the key element in a proposed zoning ordinance.

Eight months before the 1975 election (that is, in March 1975) the zoning ordinance was brought to public hearing, where it met only minor opposition and was approved by the Planning Commission and adopted by the Board of Supervisors.<sup>3</sup> The zoning ordinance replaced the across-the-board 1 DU per acre of the existing zoning with five districts in which different densities of residential development were permitted in the form of various types of development including clustering and the transfer of development rights.

The Planning Commission voted for the zoning ordinance 7-2 with Burger and Hagen opposed. Hagen was opposed because he felt that not enough incentive was provided for the developers to acquire development rights through transfer. On the advice of the Township Solicitor and County Planning Commission officials, the "by-right" density of the Development District had been increased from the existing 1 DU per acre to 2.5 DU per acre (effectively 0.4 acre lots). These authorities had argued that the courts would strike down the ordinance as exclusionary, if the only way significant development could be achieved was through the transfer of rights. The Board of Supervisors voted 2-1 in favor of the zoning ordinance. Supervisor Reimer voted against it because he was opposed to allowing high density cluster development in the agricultural district which might require sewers which, in turn, would increase development pressure. Thus the only votes in opposition to the zoning ordinance, as to the Comprehensive Plan, reflected feelings that not enough was being done to ensure the land use goals of farmland preservation.

The enactment of the zoning ordinance was helped by the support of the Civic Association and the Land Use Task Force and by the general feeling that something had to be done to replace the inadequate land use controls in the Township. The ordinance was opposed by some influential large landowners and by some development interests. Curtis Iden, a real estate broker who worked for passage of the ordinance reports that a number of real estate people resented his efforts and accused him of "taking bread out of their mouths."



The first, and to date the only, transaction involving TDR occurred in 1977-78. This will be discussed further below.

In January 1978, Donald Parker, a former president of the Land Use Task Force, began a six-year term as Supervisor. The combination of Silver and Parker assured a solid majority for instituting programs to attain the land use objectives developed earlier by the Land Use Task Force. In October the zoning ordinance was amended. The result of the amendment was to reduce the potential number of dwelling units in the Development District by nearly 50 percent--from 5,978 to 2,967.

d. Curative Amendment Challenges

Late in 1974 just before the zoning ordinance was voted on, seven developers brought suit against the Township alleging that the Township's zoning ordinance was exclusionary and therefore unconstitutional and asking that this deficiency be "cured" by amending it to permit certain types of development (Figure 13-4). Although all challenges were individual actions, every developer was represented by the same law firm.

Challenges to local zoning ordinances by developers seeking "curative amendments" have been common in Pennsylvania even since the curative amendment procedure was enunciated,<sup>4</sup> but challenges by seven developers at one time to a small township was unprecedented. It may be an indication of the fear of new and successful precedents which the Buckingham program injected into the development industry.

The lower courts ruled in favor of the developers, but the cases were appealed by the Township. The continuing fight against the curative challenges and the growing realization that farmland preservation needed legislative support from the state, led the Board of Supervisors to establish a new position of special projects coordinator. Verna Shmavoniam was employed as the coordinator to communicate and coordinate with the state legislature on agricultural preservation, seek grant funding from state, federal, and private sources, inform township residents of ongoing activities and programs through newsletters, special meetings, and events, and to assist in implementing Township business and special projects.

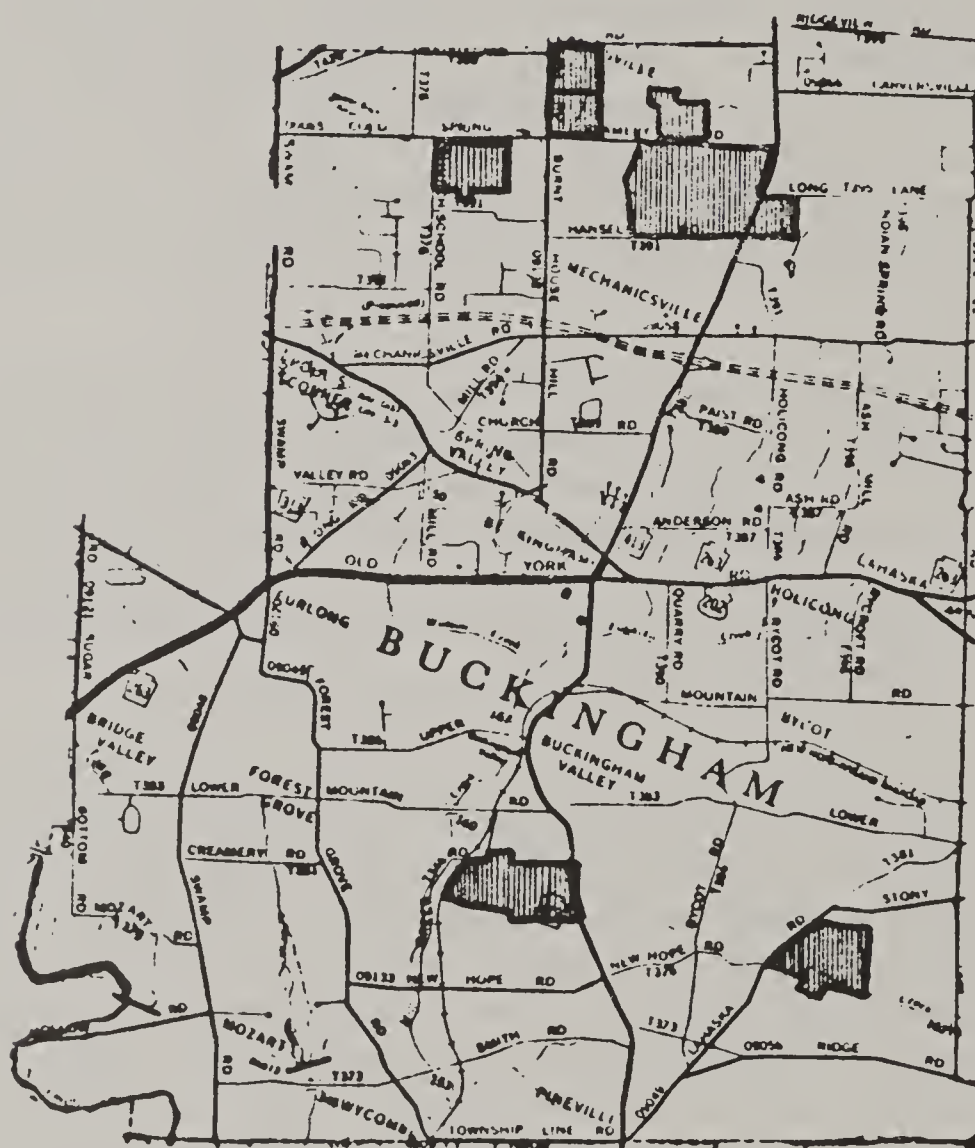
e. Purchase-of-Development-Rights Proposal

It had been generally understood by members of the administration that the transfer of development rights



Figure 13-4

PROPOSED DEVELOPMENTS THAT ARE THE SUBJECT OF  
CURATIVE AMENDMENT CHALLENGES



out of the Agricultural District and the clustering of development in the District would not be sufficient to attain the goal of preserving the township's farmland. A program for the voluntary purchase development rights, therefore, was prepared.

Since no state or federal funding could be obtained, a \$2,000,000 bond issue by the Township was sought. Generally, the Township Supervisors make all budgetary decisions in Buckingham, but in this case because of the amount of money involved, the potentially controversial nature of the program, and the difficulty of carrying it out without a consensus, it was decided to put the matter to a referendum at the time of the May 1979 primary election.

The proposal became a rallying point for those who had opposed the land use policies of the current Board of Supervisors and the Planning Commission. These people swelled the ranks of the Taxpayers Association and formed the Land Rights Association, which consisted of farmers and others. Those opposed to the PDR proposal were well organized and energetic. Thirty or forty of them visited most of the households in the township with a petition to stop the program. Many put up signs on their properties denouncing it. They were supported by the Doylestown Daily Intelligencer, the only local newspaper available to residents of the Township. As in many such campaigns, the proposal was distorted and attacked unfairly. Some proponents received threatening phone calls. The vehement opposition of some farmers seemed to set the tone: farmers who were generally favorable to the proposal did not want to "break ranks", non-farmers questioned the merit of the proposal to pay money to farmers when they heard that farmers were against it.

Besides this, efforts of the administration appeared to be feeble. Five public meetings were held. A fact sheet was mailed to farmers (and was denounced by the opposition as a misexpenditure of public funds). An informative 16-page brochure was prepared and mailed to each resident, but this arrived late in April. Paul Silver spent several days just before the election talking to as many residents as he could. Neither the Civic Association nor the Land Use Task Force played a strong role. The referendum was defeated 5-1.

The reasons for such a decisive defeat are many. A complete analysis is not possible, but the interviews suggest the following factors.

1. Some voted against the proposal simply because they did not see the wisdom of farmland preservation or were in favor of development. Among those actively opposed to the PDR proposal were George Colley who runs a typewriter business, Harry Scarlett a former flight engineer who owns ten acres, and the owners of the Comley Turf Farm whose land will be good only for development in another ten years when most of the topsoil will have been sold off.

Development interests including developers, lawyers, and the Doylestown newspaper, were concerned that a successful Buckingham PDR program might become a precedent for programs in other parts of the county and region which would significantly reduce the amount of land available for development. Their concern about the Buckingham land use policies had been made evident earlier by the large number of curative amendment challenges. Perhaps they felt that success in crippling any part of the Buckingham program would weaken the entire program.

2. Some voted against the introduction of a new tax. Although the referendum did not mention funding sources, it was generally known that introduction of a wage tax was intended to provide the necessary funds.

3. Some linked the proposal to Will Irvin, candidate for Supervisor who was known to be in favor of a sales tax, and voted against both.

4. Some landowners were apprehensive about the idea of selling interests in land--even though all sales were proposed to be voluntary. Full ownership of land is a traditional form of investment, thought to be less risky and less tricky than other investments. To sell rights in land was to close some options and to take the risk that the value of the rights in the future would prove to be greater than the amount paid.

5. Some didn't think that the sum requested would be large enough to do the job. Having spent the money, the Township could end up with isolated farms preserved surrounded by development and therefore unfarmable.

6. Some were concerned about the magnitude of cost (said by the opposition to be \$70 per year for the next 30 years for every working person). Particularly concerned were some farmland owners who saw themselves being taxed to "pay for the purchase of their own development rights."



7. Some were generally opposed to any government initiative in the wake of Proposition 13, a general distrust of government, and the allegations that the Township had acted improperly in spending funds to fight the curative amendment challenges at the state level.

f. Recent Initiatives

The resounding defeat of the PDR proposal has not led the Township administration to give up its efforts at farmland preservation. In October 1979, as the result of participation in the State Intergovernmental Council, the Board of Supervisors set down the elements of "An Agricultural Preservation Policy," and asked "Governor Thornburgh, the State Departments of Agriculture, Environmental Resources, and Community Affairs, and the Office of Policy and Planning, as well as legislators and local government officials to formulate a cooperative action program that can be implemented rapidly." The policy identified four major areas requiring immediate action:

- Agricultural Districting: in which voluntarily participating farmland owners would restrict their land to agricultural use and in return receive benefits.

- Acquisition of development rights: both by public purchase and by private transfer.

- Tax reform: by eliminating or putting a cap on property taxes, by instituting a system of state income tax credits such as that of Wisconsin and state inheritance taxation based on assessment at farm use value, by institution of dwelling construction taxes to defray the costs of infrastructure, and by a capital gains tax on land sales.

- Development of agricultural markets and profits: by encouraging producer cooperatives, new crops, new technology, and new marketing approaches such as New York City's "Green-markets."

In addition to these four major elements, the Policy advocates: "agricultural zoning by local ordinance, the establishment of a statewide agricultural preservation board, and the means for regional cooperation through which contiguous townships can work together in establishing preservation programs."

In December 1979, the Supervisors imposed two taxes as part of their effort to attain the land use objectives of the

Plan. A development impact tax of \$300 per new dwelling unit was instituted to pay a significant portion of the costs of roads, police protection and other infrastructure caused by the new unit. An earned income (or wage) tax of three-eighths percent was imposed on all wage earners living in the township and on all persons employed in the township. Although wage taxes are unknown in southeastern Pennsylvania (except in Philadelphia) they are used by 95 percent of all second class townships and 86 percent of all taxing districts in the state.<sup>5</sup> Income taxes shift the tax burden from owners of land to income earners thus reducing tax pressures on farmers (and also on retired people with low incomes). The new income tax may make it possible to reduce municipal property taxes, but its impact will be limited since the great majority (about 88 percent) of the property tax is accounted for by the School District, which includes several townships in addition to Buckingham.

A sewer and water plan (funded under section 201) has been underway in the Township for several years. The final report, expected in the spring of 1980, was expected to reject a "big pipe" solution and rely on alternative treatment and disposal systems such as land application.

Early in 1980, the Township was beginning the process of updating its Comprehensive Plan and its zoning ordinances, both of which were then five years old. To help initiate this process, a brochure Buckingham 1980, was prepared for wide distribution.

In 1979, the Township ran a deficit of \$80,000. This deficit served as the issue for a strong and concerted political attack on Township Supervisor Silver and others who led the efforts to preserve farmland. The propriety of expending township funds to lead the statewide fight against the curative amendment procedure has been questioned. The continued viability of the administration is far from certain.

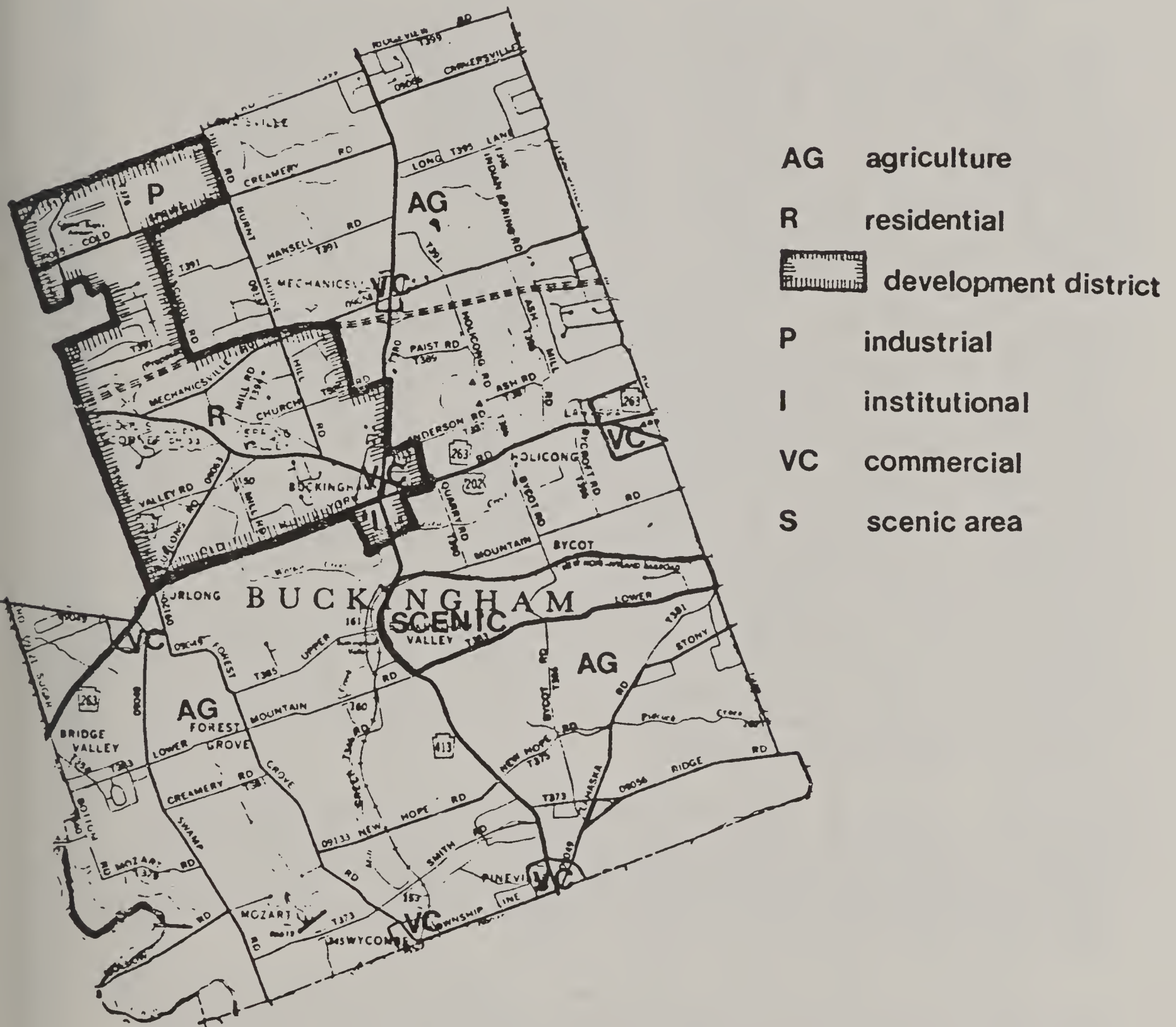
#### B. Provisions and Incentives for TDR

The TDR provisions comprise Article VI (Sections 601-606, 608-609) of the Buckingham Township Zoning Ordinance.

As shown in Figure 13-5 the Zoning Ordinance and Map involves a limited number of different zoning districts. Various types of development, such as single family, single family cluster, and mixed housing types are allowed in each district, however.

Figure 13-5

## ZONING MAP OF BUCKINGHAM TOWNSHIP





The TDR provisions in Buckingham Township's zoning ordinance have all the characteristics of a classic TDR ordinance. Both a preservation district and a development district are designated; rights may be transferred from the preservation district (Agricultural District, AG) to land in all other zones, including industrial and commercial zones. Development rights can be completely severed from the land: one person need not have full fee ownership of both preservation and development tracts at the time of transfer.<sup>6</sup>

The implications of the ordinance can be seen in Table 13-4. Part A of the table indicates the options available for the owner of land in the Agricultural District. He may develop at low density (0.2, 0.3, or 0.5 dwelling units per acre depending on the type of development) but in all cases must concentrate development on a small percentage of his land (on 20 percent under single family and on 10 percent under single family cluster and mixed housing type performance zoning). Alternatively, he may sell his development rights to an owner of land in the Development District. One DR is assigned to each acre in the Agricultural District. The owner of land in the agricultural district, therefore, has an incentive to sell development rights, since he may sell 1 DR per acre (the right to build 1 DR) but may develop his agricultural land at densities of only 0.2-0.5 DU per acre. This incentive, however, is tempered by the fact that at full development throughout the township, only 1,862 development rights could be transferred in addition to the 3,341 units which could be built in the Agricultural District (See Table 13-4B). Thus, landowners in the AG District could realize financial gain from the construction of 5,203 dwelling units. Therefore, there would be no use for 7,797 DRs out of the 13,000 originally assigned to land in the Agricultural District. This excess supply could be expected to have a depressing effect on the price of development rights.

The developer of land in the Development District is offered incentives of increased density, as detailed in Table 13-4C. These density incentives are generally highest if development takes the form of a "performance" subdivision which consists of a mixture of housing types.

Walter C. Evans<sup>7</sup> has observed a number of changes between the TDR proposal of the Agriculture Committee and the ordinance adopted. A provision was eliminated which would have allowed a farmer to split off one or two lots for single family development, and the ability to transfer rights within the agricultural district was removed. These two changes served

Table 13-4

DEVELOPMENT IMPLICATIONS OF BUCKINGHAM TOWNSHIP ZONING ORDINANCE

A. Options for Owner of Land in AG Zone

AG District

sell 1 DR per acre for transfer to Development District  
develop at 0.2 DU/acre under single family (B-5) provisions  
develop at 0.3 DU/acre under single family cluster provisions  
develop at 0.5 DU/acre under performance (mixed housing types) provisions

Potential market for transfer of 2967 DR (1 out of 4)

B. Implications for Total number of DU in Township

	Acres	DR Assigned	Potential D.U.	
			Without Transfer	With Transfer
Preserv. District	13,000	12,474	3,742 <sup>b</sup>	3,341 <sup>c</sup>
Devel. District	1,753	1,105	1,105 <sup>d</sup>	2,967 <sup>d</sup>
Total	14,753	3,579	5,005	6,308
				Difference
				-599
				+1,862
				+1,303

C. Incentives for Developer in Development District

Increase in DU per net acre with DR transfer					
Type of Development	Country Resid. District		Village Resid. District		Village Center District
	Percent	Absolute	Percent	Absolute	Percent Absolute
Single family	106	.9	107	.9	39 0.9
Single family cluster	137	1.8	223	1.5	---
Performance subdi- vision	511	6.8	120	3.3	100 4.3

a) One DR is assigned per acre.

b) Under ordinary zoning (performance, cluster, or single family) an average of only 0.3 D.U./ac. can be built (see A above)

c) (13,000 ac - 1862 ac) 0.3 du/ac = 3341 D.U.

d) Computations by Tatman & Lee, Consulting Engineers, Sept. 18, 1978. (2967 D.U. with transfer - 1105 DU without transfer = 1862 DR transferred.

to keep the agricultural area completely free of development, but they reduced the opportunities for farmers to realize the development value of his land. The decision of the Township to increase the total supply of development rights certificates (to one per acre instead of 0.85 per acre as originally purposed by the Agricultural Committee) as well as the decision to increase the "by right" development density of the Development District served to reduce the value of a development right.

Evans and a number of others who have studied TDR in Buckingham Township have noted that the failure of the Township to provide sewer service in the Development District indicated that the Township administration had not seriously tried to generate the development demand which would make the TDR system work. They have claimed that this failure to provide encouragement to developers shows that the Township was more interested in excluding development than in preserving agriculture.

Since the adoption of the zoning ordinance in 1975, 79 percent of all new residential development has occurred in the Development District rather than in the Preservation District. When measured as a percentage of total land in each district, the concentration of recent development in the Development District is even more convincing. Since 1975, 10.7 percent of the Development District has been developed (Table 13-5). Based on this record, it appears that the Township's efforts to preserve agricultural land have met with considerable success. The major credit cannot be given to the TDR system, however, since of the 258 dwellings built in the Development District, only 19 (or 7 percent) are accounted for by the transfer of development rights.

Associated with the development of 68 units in the Agricultural District and the 50 acres they have taken are deed restrictions on 108 acres and the retirement of 113 development rights. Once again, the majority of these restrictions and retirements cannot be attributed to the transfer of development rights but to more traditional clustering through the single family and single family cluster provisions of the zoning ordinance.



Table 13-5

RESIDENTIAL DEVELOPMENT IN BUCKINGHAM TOWNSHIP  
March 1975-December 1979

	<u>Number of Acres Developed</u>		<u>Number of</u>
	<u>Total</u>	<u>% of District</u>	<u>Dwelling Units</u>
Preservation District	50	0.4	68
Development District	187	10.7	258
Total	237	1.6	326

C. Transactions Completed through TDR

Soon after the zoning ordinance had been adopted, a young developer, Robert C. Curtis became interested in using the TDR provision. It was reported in the interviews that a member of the Bucks County Planning Commission staff was instrumental in introducing Curtis to the TDR concept as it had been enacted in Buckingham Township and in the availability of a site in the development district close by Buckingham Village. Curtis purchased the site at a price which, according to one real estate agent, was higher than warranted unless development rights were transferred to it. In order to increase development density and profit, Curtis purchased a total of 19 development rights.

The first 12 rights were purchased in January 1977 from Curt Iden, who sold all the rights from his property of 26 acres. Iden was thoroughly familiar with the concept of TDR and had worked for the passage of the zoning ordinance as President of the Civic Association. His wife had served on the agricultural subcommittee which helped enunciate Township goals and develop the Comprehensive Plan. Seven months later, an additional seven development rights were sold to Curtis by Wayne and Barbara Schmitt, friends of Iden.

The first 12 development rights were sold for \$1,833 each and the additional seven for \$1,429 each. The average for all 19 was \$1,684.

Curtis' development, known as Apple Hill, consists entirely of town houses, arranged in two parallel rows with a cul-de-sac access way between them. The first 13 units were completed in 1977. Their prices were about as high as for

similar units in nearby Doylestown or New Hope, but they lacked amenities such as tennis courts or a swimming pool which competitive developments offered. Apple Hill also had a septic system which was to be owned by a homeowner's association. Prospective buyers were reluctant to assume this responsibility. As a result of these marketing factors, sales went slowly.

Curtis, the original developer, sold his interests to a second developer, who now is completing construction of the second and final row of houses. There appeared to be one or two vacancies in the completed houses in December 1979.

The first row of houses was designed in a contemporary style. Evidently because of the poor marketing performance, the second row was completed in a (rather bland) colonial style. The two architectural styles, covering almost identical building masses, are not pleasing in juxtaposition. The landscaping is sparse and generally the development lacks charm. In addition, it is parallel to Route 202, the highway carrying by far the heaviest traffic in the township. At least one real estate professional, however, believes that the poor marketing performance was not caused by design characteristics, but by other factors mentioned above.

No other townhouses have been built in the township before or since Apple Hill. A few cluster subdivisions, however, have been built in the Agricultural District. Probably the most successful one from an aesthetic and environmental point of view is Indian Walk, developed by Curtis Iden on Mechanicsville Road in the northeastern part of the township. A total of 15 dwellings would have been allowed on the 50-acre tract under ordinary zoning. The performance subdivision created consisted of 12 units, of which ten were clustered on one-half-acre lots and located in a wooded area. An existing stone house and barn were retained. The remaining acreage was deed-restricted and sold to an adjoining tree nursery for \$1,750 per acre.

The lots in Indian Walk sold steadily, but somewhat more slowly than originally anticipated. The original hope was to sell all lots in one and a half years. In December 1979, at the end of two and a half years, the development was virtually sold out, with only one of ten lots remaining to be sold. The developer retained design control over the houses to be built and encouraged a mix of contemporary and traditional designs. The eight dwellings built to date are pleasing individually and for the most part as a group.<sup>8</sup> The buildings are hidden



in a mature woods and the overall landscape retains its traditional character.

The developer reported that one-half of the potential customers were unwilling to investigate further when they learned that the house lots were less than one acre. However, those who visited the site were impressed by the development and quickly realized that although the actual lots were only one-half acre the effective lot was much larger.

Evidently, a more rapid market response was received by two developments of colonial-style houses in the Development District. Both were in accessible locations, but away from heavy traffic, and were on gently rolling land. One of these developments, Durham Village, a "performance subdivision" of 10,000 square-foot lots, is in the Village Residential zone, which permits 5.5 units per acre (gross). The other, Buckshire Valley, consists of one-acre lots. A realtor associated with these more traditional development ventures states that "when people come out in the country to Buckingham they expect to get a large lot." He noted that there is a market for townhouses in Doylestown, but not out in Buckingham.

#### D. Biennial Reviews of TDR

The Township zoning ordinance (Section 607) calls for a biennial review "to insure the workability of Transfer of Development Rights." Two such reviews have been completed by the planning Commission, one in September 1976 and the other in May 1978. The 1976 review reports that "the major complaint of those at the Hearing was that there is not enough market for Development Rights." Other comments reported include the observation that "the lack of sewers in the Development District limits the size of developments to approximately 100 bedrooms and thus the market for D.R.'s is very limited" and that "the reduced building activity in 1974 and 1975 has made it difficult to make an accurate analysis of the TDR program." It was also noted that "The one case when Development Rights have been purchased by a developer for use in the Development District seems to indicate that the program is workable."

The 1978 review states the "TDR system is not functioning, compensation is not being realized and there is no present market."

In order to strengthen the market for development rights, the 1976 review discussed the possibility of increasing allow-



able densities in the northwest portion of the Development District where sewerage facilities could be provided when and if the Chalfont Sewer Plant is expanded, establishing a monetary fund to purchase DRs from persons who have a serious financial problem and cannot find a buyer for their DRs, permitting Transfer of Development Rights between properties in the Agricultural District, and enlarging the Villages to provide more sites for potential transfer.

The 1978 review went beyond reporting discussion and made 13 recommendations which included all the items reported in 1976. The recommendations included: increasing the demand for DRs by equalizing and reducing by-right densities in the Development District, and possibly increasing its size, studying the possibility of adding incentives in the industrial district, and proceeding with the 201 study to see how the Development District can be sewerred; decreasing the supply of DRs by reducing the number of outstanding DRs by rezoning Buckingham Mountain to five-acre scenic zoning, by reassigning DRs based on site capacity calculations (if legal), and instituting a program for voluntary retirement of DRs; and revising public financial incentives and disincentives by guaranteeing a ceiling on future taxes for those who sell DRs, and by considering an income tax to replace the real estate tax; and exploring a bond issue or other financial arrangements for the purchase of Development Rights.

#### E. Administrative Procedures for TDR

In 1975, after the zoning ordinance was enacted, an "original distribution" of development rights was made to each landowner for the tax parcels owned in the Agricultural District. Each landowner was notified by registered mail of the number of development certificates (rights) available to him. No paper certificates are issued, but the Township keeps an official record at the Township Offices on a form such as that shown in Figure 13-6. Subsequent changes in the number of development rights attached to the parcels are recorded on the form. Note that the number of development rights may be affected by a number of events in addition to the actual "transfer" by sale or donation of rights.

A transfer of development rights requires the following documents:

1. A statement by the original owners that a given number of rights are to be transferred from specified parcels and a petition that the parcels be reclassified from AG-Agricultural to AP-Agricultural Preserve.

Figure 13-6

FORM USED FOR OFFICIAL RECORD OF DEVELOPMENT  
RIGHTS ATTACHED TO A GIVEN PARCEL OF LAND,  
BUCKINGHAM TOWNSHIP, PA.

DATE	TRANSACTION		NO. OF CERTIFICATES	BALANCE
	TYPE	INFORMATION		
9/6/75	A	Original Distribution		

KEY

A - Distribution by Township  
B - Sale of Property  
C - Property Purchase  
D - Cancellation of Certificates  
(Development Option)

E - Sale of Certificates to  
Another Landowner  
F - Sale of Certificates to  
Township  
G - Donation to Township  
H - Miscellaneous Adjustment

2. A Declaration of Development Rights made by the original owner who is transferring his rights, spelling out the ways in which the land will be restricted, the ways those restrictions may be changed, and agreeing that the restrictions and conditions shall be a covenant running with the land.

3. A certification by the Township that the given number of Development Rights have been transferred from the specified parcels and (if applicable) assigned to the specified parcels.

4. An amendment to the zoning ordinance and map of the Township changing the classification of specified parcels from Agricultural to Agricultural Preserve.

5. Publication of a legal notice in the newspaper describing the amendment to the zoning ordinance.



III. EXPERIENCE WITH TDR IN OTHER JURISDICTIONSA. Town of Southampton, Suffolk County, N.Y.

The Town of Southampton ordinance (Building Zone Ordinance No. 26, Sections 2-40-20 and 2-40-30, 1972) is the earliest TDR ordinance to be enacted for the preservation of extensive areas in natural uses. It permits the transfer of rights from specified types of land which would then be preserved for particular environmental purposes: from porous marine soils in order to maximize recharge of ground water, from SCS Capability Class I and II soils for permanent agricultural use, from tidal wetlands for their ecological benefits, and from lands designated in the town's Master Plan for open space use. A development district is not identified explicitly, but the development parcel must be within the same school district as the preservation tract. The Town Board must decide whether or not to consider each application. Then, after the applicant has paid a filing fee of \$250, the Town Board must decide whether or not to approve and accept title to the tract, which then must be used as permanent open space. The ordinance (Sect. 2-40-30) also provides for planned residential development in an Agriculture Overlay District.

Since the enactment of the ordinance in 1972, only one TDR transaction has been completed. That was in 1977 and did not involve agricultural land. A developer (Milgraum and Israelson) owned a long, narrow tract of 135 acres which would have required an excessive length of road to develop fully. The developer also owned another tract some distance removed. The two tracts met the TDR requirements: they were both in the same school district and both were zoned for minimum lot size of 80,000 square feet. The developer donated the fee of 36 acres in the rear of his 100-acre tract to the Town. He transferred the 18 development rights (36 acres x 0.5 DR/acre) to his other tract.

Since there are many long, narrow tracts in the Township, other such TDR transactions may be expected according to the Town planner. None of these tracts involves agriculture, however.

One earlier attempt was made (before 1975) to transfer rights but was unsuccessful. In this case the developer owned land in each side of an arterial. He attempted to transfer development rights from the tract on one side to the tract on the other. He proposed that the higher density development be of townhouses. Nearby residents objected to the high

density housing proposed and the transaction was not completed.

According to Southampton's planner, the Suffolk County PDR program,<sup>9</sup> because of its high cost, cannot possibly acquire enough development rights in the town to satisfy the preservation needs of the Town. In the autumn of 1979 the Town was exploring a PUD-like approach. An initial proposal called for open space of 65 percent and development of 35 percent in certain specified areas of the town. This mandatory proposal was not adopted. A voluntary approach was then being considered as an alternative.

Later interest developed in the purchase of development rights by the Town. In November 1980, the voters authorized a \$6 million program, making Southampton the first municipal government in the United States to fund a PDR program to protect farmland.

#### B. Sunderland, Mass.

In the 1960's, Sunderland was the only town adjoining Amherst, the location of the University of Massachusetts, which did not have zoning restrictions on apartments. During that decade, the University mushroomed from 8,700 students to 24,000, and Sunderland's population doubled, reaching 3,000 by 1970 and providing a large portion of the multi-family housing units required by the student population off-campus.

In reaction to this growth, a proposal for allowing cluster development and limited development rights transfer was made in 1973. The proposal was rejected, in part because of a desire to preserve agricultural lands more effectively and to develop a more comprehensive approach to the town's land use problems.<sup>10</sup>

Six citizen advisory groups representing major interests in the town were recruited by the Planning Board and given the responsibility for initiating proposals to be considered by the Planning Board. As community goals became articulated, it was clear that high value was placed on preserving the fertile soils along the Connecticut River for agricultural use, and also for the psychological, scenic, and economic benefits they provided. Concern was also expressed that if the development value of these lands was removed without compensation, the major wealth of the landowners would be removed, affecting ability to borrow funds for current operation as well as for their retirement.<sup>11</sup>

A zoning bylaw was prepared which incorporated 1) a criti-



cal resource district (in which development would require a special permit from the Zoning Board of Appeals indicating that the proposed development is consistent with the goals of the district), 2) an Open Space Community provision (which permits cluster development anywhere except in the prime agricultural zoning district), and 3) a Transferable Development Rights provision (allowing for voluntary transfer of development rights from land in the prime agricultural district to areas outside the district).

The bylaw was approved by a vote of 107 to 39 in January 1975. Two earlier attempts to pass it failed to obtain the required majority by 13 and 4 votes respectively. The first vote failed because of controversial commercial zone amendments, the second because of apathy by the public in general and the bylaw's supporters in particular. The small vote--for a town of over 3,000 residents--is evidence of the lack of involvement and low voter turnout, which is allegedly typical in Sunderland. Some apprehension was expressed about the TDR ordinance's feasibility because of its complexity and sophisticated incentive options. The successful vote was preceded by vigorous efforts to inform the electorate and build support.

There have been no transactions to date using the TDR provisions and little evident interest in using them. On the other hand, the Town Clerk states that "no farmland has been lost" since the ordinance was passed. One reason may be that a number of townhouses had been built before the ordinance, the University of Massachusetts stopped growing in the early 1970's, and therefore the market for higher density had been saturated.

#### C. Hillsborough Township, Somerset County, N.J.

Hillsborough Township, near New Brunswick, is under heavy development pressure. Although a substantial area is farmed, only a small proportion of land is owned by farmers. Most of the farmed land is owned by out-of-town people, presumably speculators. The township is concerned with preserving land primarily for parks, school sites, and environmental protection rather than for agricultural use.

Hillsborough's ordinance (adopted in 1975) allowing the voluntary "transfer of development credits" specifies four concentric residential zones. Rights from any parcel of 25 acres or more in the two outer and lowest density zones (1DU per acre and 1 DU per 3 acres) may be transferred to either of the two inner and denser zones. The township must approve



each transfer. The developer must own both the tract in the preservation zone and the tract in the development zone. He may apply all development credits from the preservation tract to the development tract so long as he does not exceed the limits specified in the ordinance. The owner must deed the preservation tract to the township. The Township is not required to keep it in agriculture, however.

Farmers had no involvement in the development of the ordinance.<sup>11</sup> Instead, the impetus came from a developer (Edward Wasser) who owned two tracts and who sued the Township to be able to construct the total allowable number of units on one of them. The proposal was to transfer 56 development unit credits from a 60-acre tract to a 65-acre tract, thereby increasing the allowable development from 130 units to 186 units. The planning staff and Planning Board favored the transfer, but the Town Committee was reluctant to accept the preservation area tract. There were no near neighbors to the development tract and correspondingly no objections to the increased density. A rather simple ordinance was adopted in 1975, but lawyers subsequently raised a number of questions concerning the ownership and management of the open space and the ordinance was amended in 1976 before the developer's plan was approved. The extended time required by the approval process, and the greater complexity of the new ordinance caused the developer to withdraw his proposal.

In 1978, a second developer, David Savage, with land in the development zone purchased an inactive farm in the preservation zone, transferred its development credits to his land in the development zone, and deeded the farmland to the township.

A third proposal failed, in part, because of a change in zoning of the receiving land.

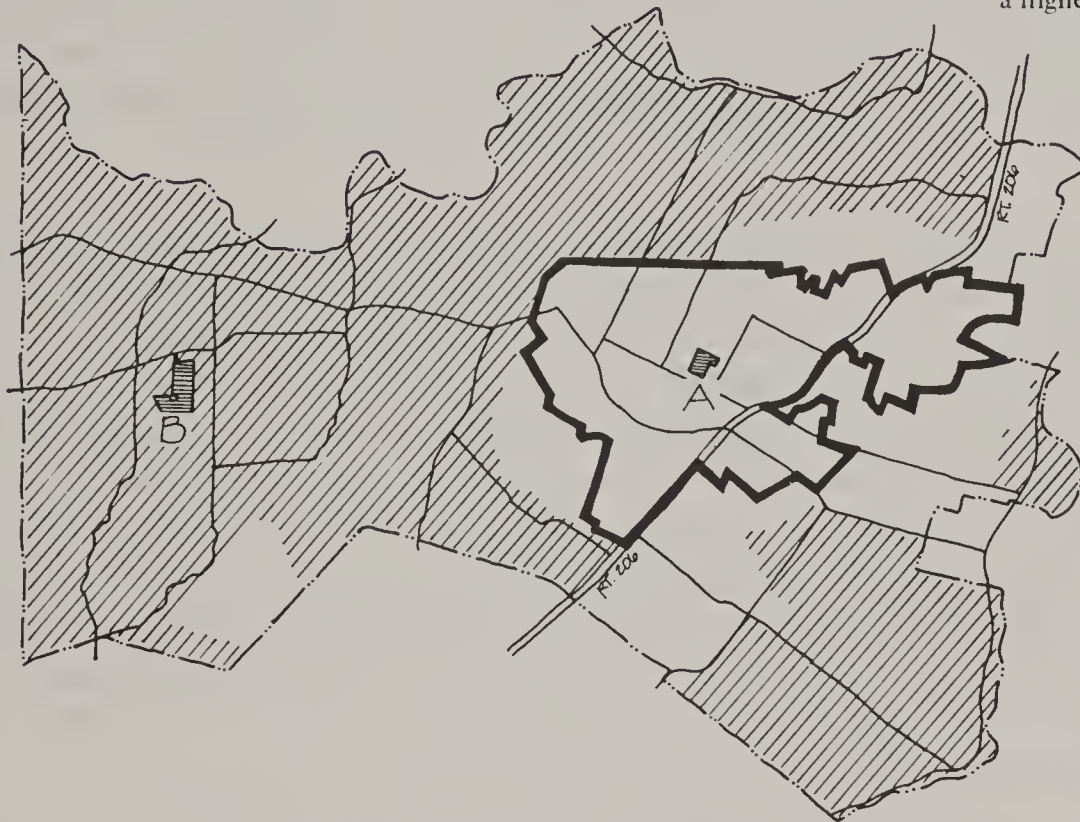
The single completed transaction warrants additional discussion. The preservation zone tract consisted of 70 acres of non-prime land on a slope that was used primarily for grazing and as a woodlot. Thirty development credits (equivalent to 30 DUs) were to be transferred from it to the development tract.

The development tract consisted of 28 acres which would have supported 104 townhouse units without the transfer, or 134 with the transferred rights. Thus, the density would have been increased from roughly four to five dwelling units per acre (actually from 3.7 to 4.7). The developer paid about

Figure 13-7

PRESERVATION AND DEVELOPMENT AREAS  
IN HILLSBOROUGH TOWNSHIP, N.J.

**Hillsborough, Somerset County:**  
Under the provisions of the Hillsborough zoning law, developers may build at higher densities in the town center if they deed land elsewhere to the township. Under this provision, the developer of site (A) will deed site (B) to the township in return for a higher density.

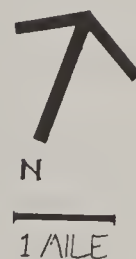


HILLSBOROUGH, SOMERSET COUNTY

NOTE: DEVELOPED LAND NOT SHOWN

- ▨ AREA FROM WHICH DEVELOPMENT CREDITS MAY BE TRANSFERRED
- ▢ TOWN CENTER, TO WHICH DEVELOPMENT CREDITS MAY BE TRANSFERRED
- ▤ SITES INVOLVED IN CURRENT TRANSFER TRANSACTION

SOURCE: HILLSBOROUGH ZONING LAW ADOPTED DEC 1976 AND TOWNSHIP PLANNING DEPARTMENT



**Source:** Planning for Agriculture in New Jersey,  
(Princeton: Middlesex-Somerset-Mercer  
Regional Study Council, Inc., 1980).



\$3,000 per development credit plus some legal costs. This compares with approximately \$4,000 for land per DU in the original development tract itself.

The Township Committee, not the Planning Board, is the body which has the power to accept title to the land in the preservation area. The Committee was not willing to agree to a binding commitment solely on the merits of the tract to be donated. Instead the Committee felt that it could make a commitment only after considering the entire transaction, including the reaction of neighbors to the proposed increase in density in the development zone. It, therefore, gave a non-binding, conceptual approval to the proposed donation of land, with the understanding that if the project survived public hearing, final approval would be granted.

Before a public hearing was called, it became evident that some neighbors in the development zone were opposed to the increased density proposed and the effect it would have on already-bad traffic conditions. In return for these burdens it was argued that the township would acquire title to remote low quality "junk" land of no benefit to the impacted neighborhood (In fact, the land is moderately good farmland of only moderate slope). Most of the objections came from neighbors who lived in single-family houses on one-acre lots. The other side of the development site was bordered by newly built and yet only partly occupied townhouses at eight dwelling units per acre.<sup>12</sup>

Although the Township had not originally contemplated leasing the deeded land to farmers, five have inquired whether they could lease it. Township officials intended to put the tract up for a five-year lease in the spring of 1980, after the legal details had been settled. The lease was expected to require crop rotation practices and to reserve 10 or 20 acres for a street-tree nursery for the township.

The township master plan was being revised in the winter of 1979-80, and the transfer of development credit ordinance will probably also be changed. One possibility under discussion was the institution of a more pure TDR system in which development rights certificates would be issued to owners of land in the preservation area when they want to sell. Rural zoning would be changed to a 25-acre minimum for agricultural use, but the owner would be allowed to get a dwelling unit credit for transfer for every 12.5 acres.

Thomas Peterson, the Planning Director, is well satisfied



with the TDC ordinance: It is easily understandable by developers, and easily administered. Essentially it is "cluster development at a distance." He believes that a full TDR system is more difficult to understand and, because one must keep track of floating rights, could be an administrative nightmare. Developers find the TDC procedure simple to understand, but, of course, have to find land in both the preservation and development districts at acceptable prices per unit.

Van Zandt Williams, former chairman of the Planning Board and now chairman of the Master Plan Committee, in contrast, believes that the transfer of development credits ordinance will be used only in isolated instances because of the difficulty of obtaining a binding commitment from the township to accept the preservation area tract.

Mr. Williams states that the transfer of development credits ordinance was intended primarily as a technique for saving open space, not for saving farmland. To save farmland, it is necessary to preserve extensive areas with no interspersed development. Such a program would have to mandate no development in the preservation zone. It could not be completely optional, as is the Hillsborough program. He also questions whether farming can be maintained in an area such as northern New Jersey which contains so much development and development pressure.

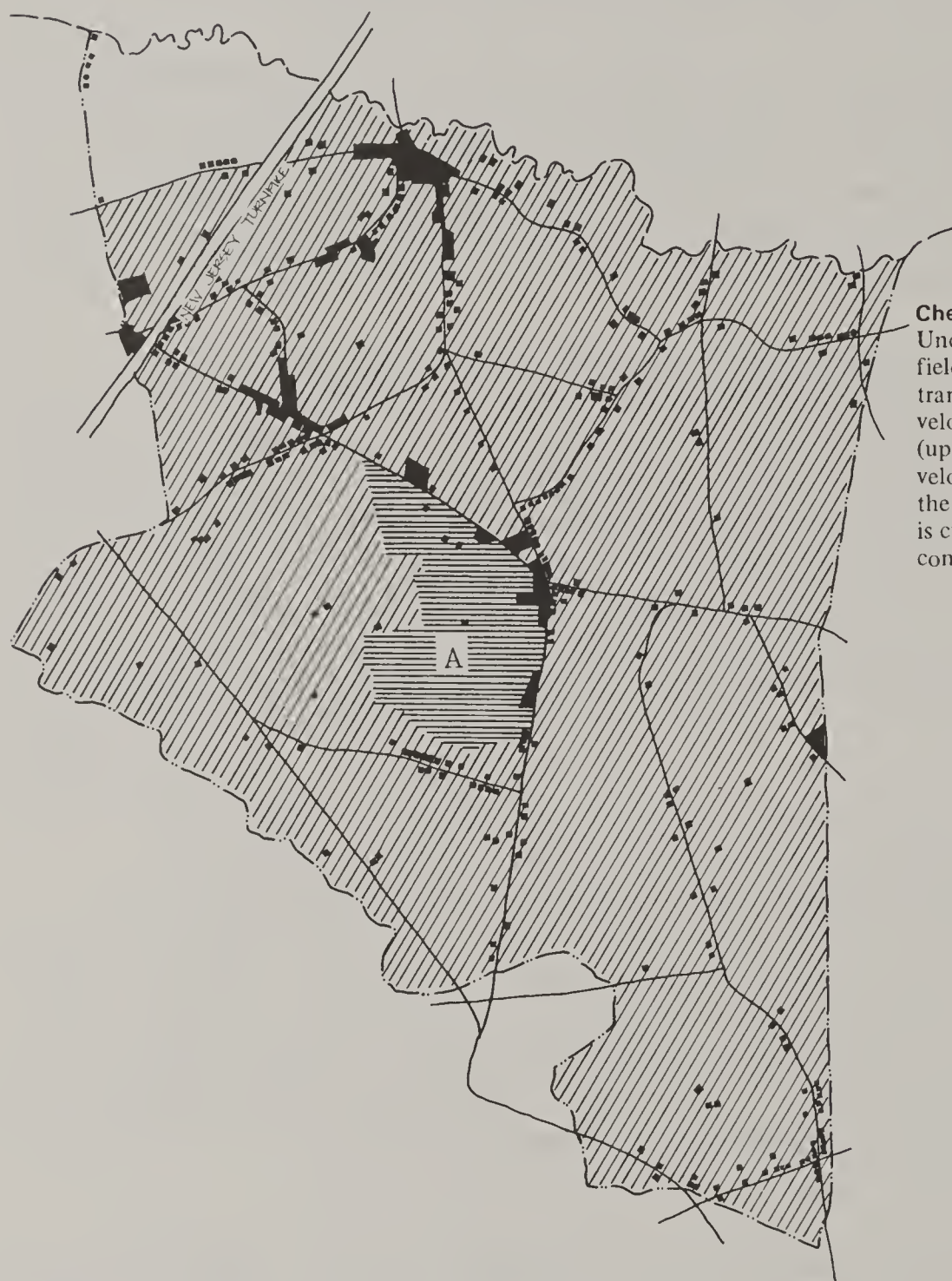
David Savage, the developer who successfully completed the transfer, is enthusiastic about both the concept and the way it was handled. He felt that the difficulties and resulting delays had nothing to do with the transfer but were the result of political jockeying and a public concern about traffic which pre-dated the project proposal. He feels that with the ordinance in force and preliminary approval for the transfer, that the developer does not run undue risk. He says that the transaction was economically beneficial to him and he would do it again if the opportunity were to arise.

Ann Van Littleworth, a realtor who worked for the enactment of the TDC ordinance, found the preservation tract for David Savage which he used in the completed transfer. Mr. Savage was interested in the TDC concept and Ms. Littleworth pressed him to make the transfer. The preservation tract will provide a rural buffer for a Girl Scout camp which Ms. Littleworth helped start.

There is a consensus in the township, embracing both parties, for the preservation of farmland. (Mr. Williams, however, questions its strength.) To help achieve this preserva-

Figure 13-8

## AREA FOR TRANSFER OF DEVELOPMENT CREDITS, CHESTERFIELD TOWNSHIP

**Chesterfield, Burlington County:**

Under the provisions of the Chesterfield zoning law allowing for the transfer of development credits, developers may build at a higher density (up to four units/acre) if they buy development rights on land elsewhere in the township. The owner of site (A) is currently planning a large housing complex under these provisions.

## CHESTERFIELD BURLINGTON COUNTY

- ▣ DEVELOPED LAND
- ▨ AREA FROM WHICH DEVELOPMENT RIGHTS MAY BE TRANSFERRED
- ▤ TRACT TO BE DEVELOPED UNDER TRANSFER OF DEVELOPMENT CREDITS PROVISION

SOURCE: CHESTERFIELD ZONING LAW, ADOPTED APRIL 1975 AND  
BUILDING INSPECTOR

Source: Planning for Agriculture in New Jersey,  
(Princeton: Middlesex-Somerset-Mercer  
Regional Study Council, Inc., 1980).



tion, infrastructure (sewers, water, roads) is being planned carefully and without excess capacity so as to concentrate new development and avoid increasing the development potential of farm areas. The township, however, lacks full control, since an independent sewer authority serves the township. The township is also encouraging low density clustering in the one-acre zone, allowing three dwelling units on two acres.

D. Chesterfield Township, Mercer County, N.J.

Chesterfield Township, located about ten miles southeast of Trenton, is about three miles from interchange seven of the New Jersey Turnpike, but does not have a direct highway connection. The township, with a population of 2,500, is generally rural, but has experienced strip suburban residential growth. Recently about 15 dwellings per year have been constructed. Much of the land is owned by speculators.

Because of fears that a TDR ordinance could not be defended on constitutional grounds without state enabling legislation and concerns about the tax status of development rights, Chesterfield adopted the restricted concept of Transfer of Development Credits instead of a more general TDR system. The developer must own both tracts at the time of the transfer, but may contingently and simultaneously sell the residual rights of the preserved tract back to the original owner or to another person.

Farmers helped initiate the TDC in Chesterfield, with many suggestions from the farm community and two farmers on the Planning Board taking the lead in explaining TDC to other farmers.<sup>13</sup> At the time of enactment (December 1975) the TDR (or TDC) idea was very new and farmers feared that if it did not work, they would have lost all opportunity to realize appreciation value. Therefore, they opposed the specification of a no-growth zone. As a result, transferred development credits can be applied to any location, so long as the resulting density does not exceed four dwellings per acre. Town officials are counting on the presence of the Turnpike and the provision of sewers in the township's northwest sector to attract most of the higher density development,<sup>14</sup> but the first large development in Chesterfield is in the midst of farmland.<sup>15</sup>

The Chesterfield ordinance has an unusual provision for undedicating a parcel where major public action has greatly enhanced its development suitability and where an equally suitable parcel of equal or greater size is dedicated elsewhere to replace it.



While the comprehensive plan ordinance was in the process of being adopted, a developer who had intended to develop at five to eight units per acre brought suit against the township, whose master plan indicated a development density of one unit per acre in all parts of town. This constant density was applied to swamps, lakes, and good land on the basis, concurred in by township farmers, that for farming purposes the combination of all types of land was necessary and, therefore, all should be valued equally.

The case was settled in 1978 through agreement to a consent order in which the developer agreed to the TDC concept and the allowable density of one dwelling unit per acre. The developer was given permission to build 1,000 units, but at the time of writing was limited to 660 units since he owned only 660 acres. In order to build the entire 1,000 units, he would have to acquire additional land. At present, the developer is in the process of acquiring an additional 200 acres, from which 200 development credits will be transferred. This 200 acres will be kept open, as will 180-200 acres of the original 600. A private sewage treatment plant with spray irrigation is planned. The township has no sewers and no plans for sewers.

Three public hearings have been held on the proposal, and a fourth is scheduled. There has been considerable opposition to the proposal because of its size and the changes it would bring to lifestyles and public service needs in the township, and because of the spray irrigation, which is unfamiliar in the area.

#### E. Town of Eden, Erie County, N.Y.

Eden, which is about 18 miles from Buffalo, is a truck farming area and the economics of truck farming is good. The pressure for development has not been great, but the town's first sewer district has been instituted, and a developer who anticipated the sewer district has had one subdivision of 120 units (1+ acre each) approved. A small part of his tract was tentatively included in an Agricultural District<sup>16</sup> which was being formed at the time, but was finally excluded from the District.

Eden has relied most heavily on the New York Agricultural District program to protect its farmland. About 50 percent of the town is now in Agricultural Districts, several of which straddle the town boundaries. Four acres are required in the agricultural districts for each dwelling unit. As of early 1980, there had been no instances of developers trying to get

a zoning change to increase density in part of an Agricultural District in order to develop.

Eden also has a Conservation District along a creek, where four-acre housesites may be allowed by special permit. One or two have been allowed.

As of early 1980, no transfers had occurred, but one was anticipated. Eden's TDR ordinance was enacted in 1977. A developer had purchased eight acres out of a tract of 10-12 acres which is an abandoned farm surrounded by residential and commercial development. The developer intended to build 48 units, but was allowed only about 42 units under existing zoning. It was thought that he would purchase some land in a C, A, or APO zoning district, transfer the needed six development rights from it to the development site, and lease the restricted land to a farmer. The development was being funded by the Farmer's Home Administration, which had approved the first 24 units. Ground had been broken for these. FmHA was expected to approve the second 24 units in the next fiscal year, that is, after September 1980. The transfer of rights was expected at that time.

#### F. Experience with TDR in Other Jurisdictions

There have been no TDR transactions in the remaining jurisdictions which have TDR ordinances (Upper Makefield, Windsor, Birmingham, Calvert County, Montgomery County, and Kennett Square).

In Upper Makefield Township, about 100 houses per year are typically built. A 270-unit subdivision has been proposed--one of the largest to date. The homes built tend to be expensive and on large lots. There does not appear to be any economic motivation for developing at higher densities. Since the enactment of the TDR ordinance in August 1975, there have been no transactions, or even attempts. As the Township Clerk puts it, "Nobody has said 'Boo'."

In Windsor there have been some discussions, but no transactions since the enactment of the TDR ordinance in 1976.

In Birmingham it was reported that very little interest had been shown by developers, although development pressure was building up in the township. Two subdivisions are active and two others have been approved. Private conservancy organizations (The Brandywine Conservancy and The French and Pickering Creek Trust) are active in the township. In addition,

one tract of land had been bought by a neighboring resident,  
and the development rights have been deeded to the Township.



#### IV. CONCLUSION

The fact that TDR ordinances have resulted in very few transfers does not mean that under the proper planning and market conditions TDR provisions would not be used. The earlier TDR systems were enacted almost exclusively by townships. Within such small areas, the variation in development possibilities is necessarily limited, and few opportunities may exist for building profitably at higher densities. Recently, however, a number of larger units of government have embarked on TDR programs. Calvert and Montgomery Counties, Maryland have enacted TDR programs (as has the New Jersey Pinelands Commission). These larger jurisdictions are more likely to contain locations of high development pressure to which it would be profitable to transfer development rights.

In addition, while the earlier township ordinances permitted the option of developing low suburban densities (such as one house per five acres) the new ordinances limit the development option to agricultural densities (e.g., one house per 25 acres in the Montgomery County ordinance, only farm-related dwellings allowed in agricultural preservation district in Pinelands proposal). The new ordinances, in effect, consist of agricultural zoning with TDR added as a possible way of compensating landowners for the loss of their development rights.

The challenge to the designer of a TDR program, thus, is to provide the market situations which will enable the developer to realize enough profit from the purchase and transfer of development so that he will find it worthwhile to engage in the TDR process and will offer an attractive price to the farmland owner. This involves not only providing incentives for the landowner to sell his rights and providing density incentives for the developer, but also designating areas under strong development pressure as development districts and assuring the availability of water, sewer, highways, and other facilities necessary for higher density development.

The designer of a TDR system might also consider bolstering the market for development rights by having the local government purchase them and subsequently sell them to a developer. Such a land banking role has been suggested for TDR programs, but has not been implemented.

## FOOTNOTES

1. John V. Helb, et al., Development Rights Bibliography, Leaflet 533 (New Brunswick: Rutgers, The State University of New Jersey). See also, for example, J. Costonis, Development Rights Transfer: An Exploratory Essay, Yale Law Journal, Vol. 83, p. 75 (1973), Margaret M. Bennett, Transfer of Development Rights: Promising but Unproven New Approach to Land Use Regulation (Philadelphia: Pennsylvania Environmental Council, Inc., 1976), George Nieswand, et al., Transfer of Development Rights: A Demonstration (New Brunswick: Cook College, Rutgers--The State University of New Jersey, 1976), David Berry and Gene Steiker, "An Economic Analysis of Transfer of Development Rights" Natural Resources Journal, Vol. 17 (January 1977) pp. 55-80, Richard L. Barrows and Bruce A. Prenguber, "Transfer of Development Rights: An Analysis of a New Land Use Policy Tool" American Journal of Agricultural Economics (November 1975), pp. 549-557, Peter J. Pizor, et al., A Transfer of Development Rights Sampler: A Collection of TDR Ordinances from Municipalities in Eight States (Experiment Station Circular No. 612, Rutgers--The State University of New Jersey).
2. Peter Rogers in Exploring the Use of TDR in Pennsylvania: Conference Proceedings, (Bureau of Environmental Planning, Department of Environmental Resources, Commonwealth of Pennsylvania, March 1978).
3. A board of three Supervisors performs both legislative and administrative roles in the Township. A town manager is employed by them, but his purview is restricted to routine day-to-day administration.
4. The curative amendment procedure found in P. Stat. Ann. Tit. 53, Section 10609.1 et seq. (adopted in 1972 and expanded in 1978) was adopted initially to facilitate the granting of site specific relief by a court. Under it, a developer who claimed that a local zoning ordinance was unconstitutional or invalid (for example, because it did not provide for the construction of townhouses anywhere within the municipality) could propose an amendment that would "cure" that unconstitutionality. In most cases, he would propose that his land be rezoned to a higher density. The local governing body would hold a hearing on the proposal and either cure the defect by adopting the proposal or some other amendment or do nothing. If it does not adopt the proposed amendment, the landowner may appeal the decision and the court may, if it finds that the ordinance was invalid, grant the amendment and, in effect,



rezone the land. In 1978, widespread dissatisfaction with the disproportionate power that this provision gave to developers led to the adoption of a parallel provision that enabled a municipality to pre-empt challenges by declaring its own ordinance invalid and then preparing and adopting corrective legislation within specified time periods.

5. Local income taxes are used in 11 states, but are common in only 4 states. (Robbie Rice Dietrich, Local Income Taxes: One Solution to Fiscal Dilemmas Facing Local Governments Today, RSRI Discussion Paper Series: No. 106. August 1978).
6. The zoning ordinance also makes provision for cluster and performance subdivisions in the agricultural zone.
7. Exploring the Use of TDR in Pennsylvania. See note 2 above.
8. Of the eight completed houses, six are of a contemporary country style in natural wood hues. The remaining two stand out from them, primarily because they are more squat and are painted in bolder colors. One of them has a brick front.
9. Lawrence Suskind (ed.) The Land Use Controversy in Massachusetts: Case Studies and Policy Options (Cambridge: The MIT Press, 1975).
10. Ibid.
11. Middlesex-Somerset-Mercer Regional Study Council, Inc. Planning for Agriculture in New Jersey, (Princeton: The Council, 1980).
12. The tract on which the town houses were built had earlier been zoned for ten dwelling units per acre, but in reaction to heavy building of garden apartment units on nearby tracts, had been rezoned to eight dwelling units per acre. The development tract in question had been rezoned to four dwelling units per acre. With maximum allowable development credits, six units would have been allowed--still below the eight allowed on the adjoining area.
13. Middlesex-Somerset-Mercer Regional Study Council, Inc. see footnote 11.
14. Margaret M. Bennett, Transfer of Development Rights: Promising but Unproven New Approach to Land Use Regulation (Philadelphia: Pennsylvania Environmental Council, Inc., 1976).



15. Middlesex-Somerset-Mercer Regional Study Council, Inc.  
see footnote 11.
16. For a description of the agricultural districting program of New York, see William R. Bryant and Howard E. Conklin, Agricultural District Legislation in New York, As Amended Through April 1980, A.E. Ext. 80-16 (Ithaca: Department of Agriculture, Cornell University, May 1980) and Chapter 4 of the Guidebook.

## V. METROPOLITAN GROWTH MANAGEMENT





Case Study No. 14

REGIONAL GROWTH MANAGEMENT  
IN THE TWIN CITIES METROPOLITAN AREA

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REGIONAL GROWTH MANAGEMENT  
IN THE TWIN CITIES METROPOLITAN AREA

By

Lisa Rosenberger

## I. INTRODUCTION

The Twin Cities Metropolitan Area encompasses two major cities (Minneapolis and St. Paul), seven counties (Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, and Washington), and nearly 200 minor civil divisions. Within the region, commercial agriculture is the largest single land use, accounting for 1,037,000 acres, or 57 percent of the total land area of the region in 1977 (Table 14-1). Agriculture is especially important in Carver, Scott, and Dakota Counties, located in the southern part of the region. Over 75 percent of this area is currently farmed. Table 14-1 shows the amount of land in farms by county in 1977.

Table 14-1

LAND IN FARMS\* 1977

<u>County</u>	<u>Total Land (acres)</u>	<u>Land in Farms</u>	<u>Land in Farms as Percent of County Land</u>	<u>Percent of Metro Area Farmland</u>
Anoka	274,918	114,400	42	11
Carver	229,171	198,600	87	19
Dakota	367,774	277,200	75	27
Hennepin	362,977	132,000	36	13
Ramsey	98,050	4,800	5	-
Scott	229,202	172,800	75	17
Washington	255,850	137,900	54	13
<u>Metropolitan Area</u>	<u>1,817,942</u>	<u>1,037,700</u>		<u>100.0</u>

\*A farm is defined as a place of ten acres or more with sales of \$50 or more and also places of less than ten acres with sales of \$250 or more.

Source: Minnesota Agricultural Statistics 1978, Minnesota Crop and Livestock Reporting Service, USDA as reported in Rural Area Task Force Report to the Metropolitan Council, 1979.



Due to the diversity of topographic and soil conditions, many different types of farming activities are found in the metropolitan area. The raising of livestock, and particularly dairy farming, is important in many counties, especially Carver, Hennepin, and Scott Counties. Cash crops, notably corn and soybeans, are a major source of income in Dakota and Washington Counties. Anoka County is noted for its vegetable production and poultry farming. Throughout the region, livestock accounted for 60 percent of the nearly \$200 million cash income received by farmers in 1977 (See Table 14-2).

Table 14-2

GROSS CASH INCOME RECEIVED BY FARMERS, 1977  
(thousand dollars)

<u>County</u>	<u>Crops</u>	<u>Livestock</u>	<u>Total</u>
Anoka	6,824	7,422	14,246
Carver	7,988	34,295	42,283
Dakota	26,992	25,840	52,832
Hennepin	14,275	14,611	28,886
Ramsey	2,873	155	3,028
Scott	9,362	21,831	31,193
Washington	11,804	13,288	25,092
Metropolitan Area	80,118	117,442	197,560

Source: Minnesota Agricultural Statistics - 1979.

Between 1964 and 1974, about 16 percent of the region's farmland was idled or converted to non-agricultural uses.<sup>1</sup> This loss can be attributed to several factors. First, the population of the Metropolitan Area has grown, from 1,524,075 persons in 1960 to 1,874,612 persons in 1970, and to 1,990,760 in 1978. The overall rate of growth, however, has declined significantly since 1970; the growth from 1970 to 1978 represents only a 6 percent increase, while during the decades 1950-1960 and 1960-1970, population grew by 29 percent and 23 percent, respectively. Perhaps a more important trend affecting the loss of farmland is the net shift of population from the cities and inner suburbs to the outlying areas of the region. Hennepin and Ramsey Counties, which contain the central cities and many of the older developed suburbs, have declined in population since 1970 while the growth has occurred in the developing suburbs and rural areas. Table 14-3 shows the change in population by county from 1970 to 1978, and Figure 14-1

illustrates the growth trends by minor civil division throughout the metropolitan area. It can be seen that while the overall growth rate of the region is relatively low, the population in non-urban counties continues to expand at a rapid rate.

Table 14-3

POPULATION IN THE METROPOLITAN AREA, 1970			1978
<u>County</u>	<u>1970</u>	<u>1978</u>	<u>% Change 1970-1978</u>
Anoka	154,712	197,780	+ 27.8
Carver	28,331	37,060	+ 30.8
Dakota	139,808	192,870	+ 38.0
Hennepin (includes Minneapolis)	960,080	939,060	- 2.2
Ramsey (includes St. Paul)	476,255	466,840	- 2.0
Scott	32,423	44,540	+ 37.4
Washington	83,003	112,610	+ 35.7
<u>Metropolitan Area</u>	<u>1,874,612</u>	<u>1,990,760</u>	<u>+ 6.2</u>

Source: Twin Cities Metropolitan Council.

In the Twin Cities Area, the decline of agriculture has become a major issue of concern, and a number of measures designed to protect farmland have been undertaken at various levels of government. What makes this region unique is the active role of a regional governing body, the Metropolitan Council of the Twin Cities area, in implementing a comprehensive growth management program which is designed in part to divert future development away from commercial agricultural areas. This case study describes the Metropolitan Council's role in guiding development in the Twin Cities region, and attempts to assess the effects of its programs and activities on the loss of farmland.

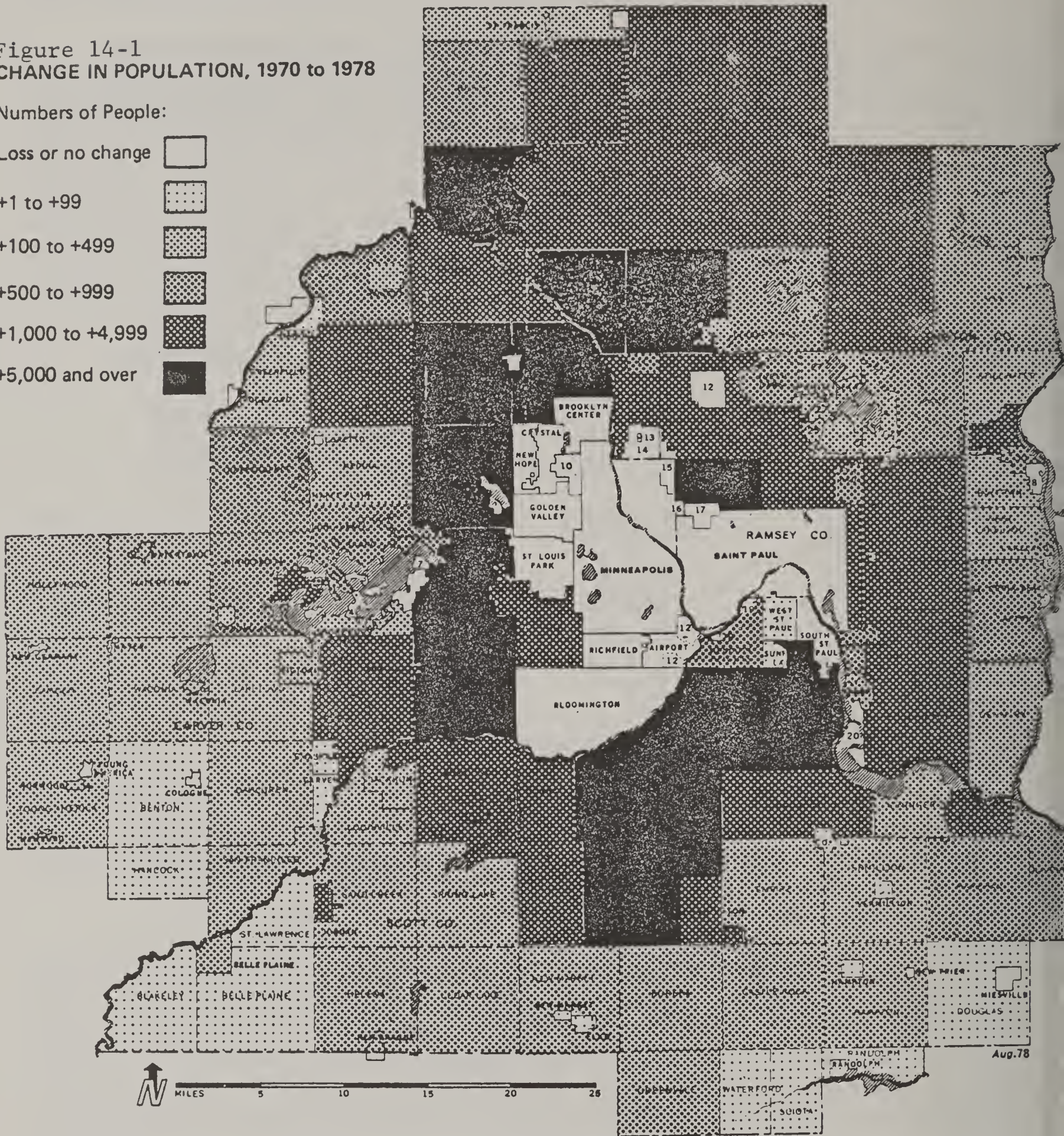
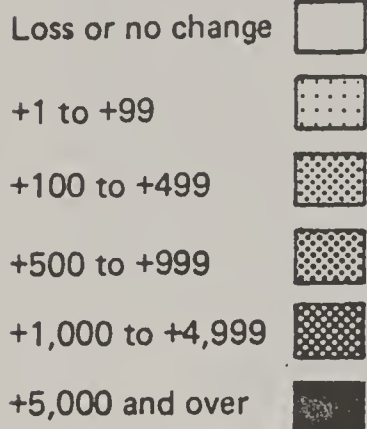
The remainder of this report is divided into four major sections. Section II outlines the powers and responsibilities of the Metropolitan Council and other regional agencies in the context of the relevant state legislation. In Section III, the evolution of the regional growth management policy, called the Development Framework, is traced, and its effects on agriculture are discussed. Newly enacted legislation proposed by



## 14. TWIN CITIES

Figure 14-1  
CHANGE IN POPULATION, 1970 to 1978

Numbers of People:



## TWIN CITIES METROPOLITAN AREA

- |                    |                     |                   |                     |
|--------------------|---------------------|-------------------|---------------------|
| 1 SPRING PARK      | 9 MOUND             | 17 FALCON HEIGHTS | 25 GEM LAKE         |
| 2 OROHO            | 10 RORHNSOALE       | 18 MENOTA         | 26 BIRCHWOOD        |
| 3 MINNETONKA REACH | 11 SPRING LAKE PARK | 19 LILYOALE       | 27 WHITE BEAR       |
| 4 TONKA RAY        | 12 U S GOVT.        | 20 GREY CLOUD     | 28 RAYPORT          |
| 5 EXCELSIOR        | 13 MILLTOP          | 21 LANOFALL       | 29 WILLERNIE        |
| 6 GREENWOOD        | 14 COLUMBIA HEIGHTS | 22 OELLWOOD       | 30 OAK PARK HEIGHTS |
| 7 WOODLAND         | 15 ST. ANTHONY      | 23 PINE SPRINGS   | 31 LAKELAND SHORES  |
| 8 MEDICINE LAKE    | 16 LAUDEROALE       | 24 MAHTOMEIO      | 32 ST. MARY'S POINT |

- ANOKA — County Boundary  
ORONO — Municipal Boundary  
CAMDEN — Township Boundary



the Metropolitan Council which created a voluntary agricultural preserves program in the Twin Cities region is described in Section IV. Section V explores the attitudes of selected farmers, realtors, local officials, and planners towards agricultural preservation and the Metropolitan Council's growth management programs in Carver and Dakota Counties, both of which contain large amounts of farmland.

II. METROPOLITAN GOVERNMENT IN THE TWIN CITIES REGION--  
POWERS AND RESPONSIBILITIES

A. The Creation of the Metropolitan Council and Other  
Regional Agencies

The Twin Cities Metropolitan Council was created by the Minnesota Legislature in 1967 primarily in response to increasingly severe water pollution problems in some of the region's 950 lakes and the inability of individual communities to deal with this problem effectively. A Twin Cities Metropolitan Planning Commission had been in existence since 1957, but it had no power to implement its broad planning policies. The Legislature recognized the need for a coordinated regional approach to certain problems and issues facing the almost 300 governing units within the seven-county area, and thus charged the newly created Metropolitan Council with guiding the "orderly and economic development " of the region. The original 1967 legislation mandated that the Metropolitan Council adopt a "comprehensive development guide" for the region. However, the "comprehensive" part of the guide, which dealt with the region as a whole, was not adopted until 1975, due to the pressing need in the early years to address the water pollution problem and other functional priorities.<sup>2</sup> Several functional development guides, or plans, were adopted prior to 1975 for sewers, airports, transportation, housing, and the environment.

The Metropolitan Council comprises 17 members appointed by the Governor with the advice and consent of the State Senate. Sixteen members serve four-year terms and represent districts of equal population in the seven-county area. The chairman is appointed at large by the Governor. Apparently the Legislature felt that if Council members were appointed rather than elected, they would be freed of the necessity of trying to please strong local interest groups in order to win reelection, thereby enabling them to take a more "regional" perspective. Nevertheless, citizen input is a vital component of the regional decision-making process, and a variety of citizen advisory committees have been formed to meet with the public and advise the Council. The Council meets formally twice a month and the meetings are open to the public.

An important feature of the Metropolitan Council is that it is supported by a statutory tax base. Forty-five percent of its \$8,000,000 budget comes from property taxes collected in the region. The remainder of the revenues are supplied by federal agencies, especially the Department of Housing and Urban Development, the Environmental Protection Agency, and

the Department of Transportation. The state occasionally contributes money for special projects or studies.

The major function of the Metropolitan Council is to set policies to guide the coordinated development of the Region. The underlying philosophy, which had been promoted by the Citizens League, an influential private research group, was that the policy-making arm of the government should be separate from the implementing agencies.<sup>3</sup> Thus, several operating commissions were also formed to implement specific policies and programs relative to waste control, transit facilities, parks and open space, airports, and sports facilities. The Metropolitan Waste Control Commission, created in 1969, is of special importance in carrying out the Council's growth management policies, since it owns and operates interceptor sewers and sewage treatment plants. In general, large scale or high density development cannot occur unless sewers are made available by the Waste Control Commission. While the commissions were organized to operate with some degree of autonomy, the Metropolitan Council appoints their members and approves their budgets.

#### B. The Fiscal Disparities Act of 1971

One of the early accomplishments of the Metropolitan Council was to secure the passage of the Fiscal Disparities Act of 1971 (now called the Metropolitan Revenue Distribution Act). The Metropolitan Council had determined that rational areawide planning would be hindered by the large disparity in the tax bases of the various jurisdictions within the region. The Fiscal Disparities Act provided for the redistribution of a portion of property tax revenues derived from new commercial and industrial development in the region. The revenues, which are collected on 40 percent of the assessed valuation of new developments, are pooled and then distributed back to the various local governing units according to a formula based on population and inversely related to fiscal capacity. Among the stated purposes of the Act are "to increase the likelihood of orderly urban development by reducing the impact of fiscal considerations on the location of business and residential growth ..." and "to encourage protection of the environment by reducing the impact of fiscal considerations ..." Thus, it was thought that reducing the fiscal incentive for local governments to attract industry would aid the effort to promote an "orderly" pattern of growth in the region.



C. The Metropolitan Reorganization Act of 1974

The legislative purpose of the Metropolitan Reorganization Act was to establish an explicit organizational framework for coordinating regional plans and programs to guide the growth and economic development of the metropolitan area. It clarified the role and authority of the Metropolitan Council, particularly in relation to the regional operating commissions. Prior to the passage of this Act, the Council's authority to oversee the activities of the regional operating commissions was unclear and inconsistent, although it did have the power to disallow major development plans of any commission. A controversy arose in 1974 over the Council's veto of a proposed airport and a proposed rail transit system.<sup>4</sup> In passing the Metropolitan Reorganization Act, the Legislature responded to the issues by affirming the Council's preeminent role as the regional policy maker and by establishing a formal program review process to be performed by the Council.

Specifically, the Act contains the following provisions:

- The Metropolitan Council must adopt long-range plans for each commission, and the commissions must operate in conformance with these plans.
- The commissions are to prepare development programs which must be approved by the Metropolitan Council. Commission budgets must also be approved by the Council.
- The Council must approve all state or local plans for constructing limited access highways in the region.
- A local government may not construct or alter sewers or other disposal facilities unless such action is in conformance with its comprehensive plan which has been approved by the Metropolitan Waste Control Commission. The Waste Control Commission must receive a copy of any application for a permit to construct a sewer system.
- The Council is directed to adopt regulations establishing standards and guidelines for determining if any proposal is of metropolitan significance and to establish a procedure for review of such proposals.

In addition, the Council is authorized to provide technical planning assistance to local governments in developing comprehensive plans. This Act was passed in 1974, one year prior to the adoption of the Development Framework.

D. Metropolitan Land Planning Act of 1976

The Metropolitan Land Planning Act, adopted in 1976, had been proposed by the Metropolitan Council as a means by which the policies and objectives of the Development Framework could be implemented. Under this law, the Council is directed to prepare and adopt plans for Metropolitan Systems, i.e., for sewers, transit, highways, airports, and regional parks. The Council then issues a Metropolitan Systems Statement to each local government which describes those elements of the plans, including population and employment projections, which apply to that jurisdiction. Within three years of receipt of the Metropolitan Systems Statement, each local government responsible for planning and zoning must prepare a comprehensive plan which includes general policy objectives, a land use plan, a public facilities plan, and a program for implementation. The Council must review all local comprehensive plans to determine their compatibility with one another, their conformity with the Metropolitan Systems Plans, and their consistency with the Development Framework. The Council has the authority to require that any local plan which is not in conformance with the Metropolitan Systems Plans be modified accordingly. This mandatory planning law was considered essential to the success of the growth management scheme, particularly since only about 50 of the 200 local governments had adopted comprehensive plans prior to 1976.

E. Rules and Regulations for the Review of Matters Alleged to be of Metropolitan Significance

Pursuant to the Metropolitan Reorganization Act and with the approval of the Legislature, the Metropolitan Council adopted metropolitan significance regulations in 1978. The regulations provide a set of criteria and a procedure for determining whether a proposed action is of metropolitan significance. Significance reviews may be initiated by the Council, metropolitan commissions, local governments, state agencies, or groups of citizens. If the Council finds the matter to be of metropolitan significance, it may issue an order suspending commencement of the project for a maximum of one year. The types of activities which may be considered of metropolitan significance include the construction of sewage facilities not in conformance with an approved local sewer

plan or metropolitan system plan, the issuance of a land use permit in a rural area which may be expected to lead to the premature expansion or construction of sewers or transportation facilities, and the issuance of a land use permit which may disrupt commercial agricultural use.

#### F. Conclusions

This section has presented a brief overview of the statutory authority and responsibilities which have been delegated to the Metropolitan Council. While few of these mandates relate directly to the preservation of agricultural land, the Council nevertheless has some control over the spatial pattern of development in the seven county area. Probably its most significant powers in this regard are its ability to control the location of sewer lines and to a lesser extent transportation services, and its review function relative to the mandatory local comprehensive planning program. In addition, the Council has used its influence in the State Legislature to secure the passage of an Agricultural Preserves Act designed to help farmers maintain the viability of agriculture in areas subject to urbanization pressures. The implications of this law are discussed in Section IV.

The unifying concept which coordinates the various functions of the Metropolitan Council is the Development Framework, adopted by the Council in 1975. With its adoption, the 1967 Legislature's call for an "orderly and economic growth plan" to guide the Council in its role as regional decision-maker was finally realized. The political and planning process which led to the formulation of the Development Framework, and its possible ramifications for the preservation of agricultural land in the Twin Cities region, are the subjects of Section III.



### III. A GROWTH MANAGEMENT PLAN FOR THE TWIN CITIES: THE DEVELOPMENT FRAMEWORK

#### A. Description of the Development Framework

The general plan for guiding growth in the Twin Cities Metropolitan Area, called the Development Framework, can be described rather simply. Its six stated purposes are to maintain the high quality of life in the Twin Cities Area, to accommodate projected growth rationally and economically, to determine priorities for metropolitan public investments, to ensure adequate housing at a reasonable cost, to protect the environment while ensuring economic growth, and to guide growth and development decisions at all levels of government. Toward these ends, a series of policy statements which serve to define the specific objectives of the growth plan have been formulated, and were adopted in 1975. The plan is termed a "framework", since it is intended only to provide a general guide for public and private decision making regarding future development in the Twin Cities region. Thus, the Development Framework is not a detailed land use plan; rather, it allows for some flexibility, and the local governments still retain a considerable amount of authority to regulate land uses within their jurisdictions.

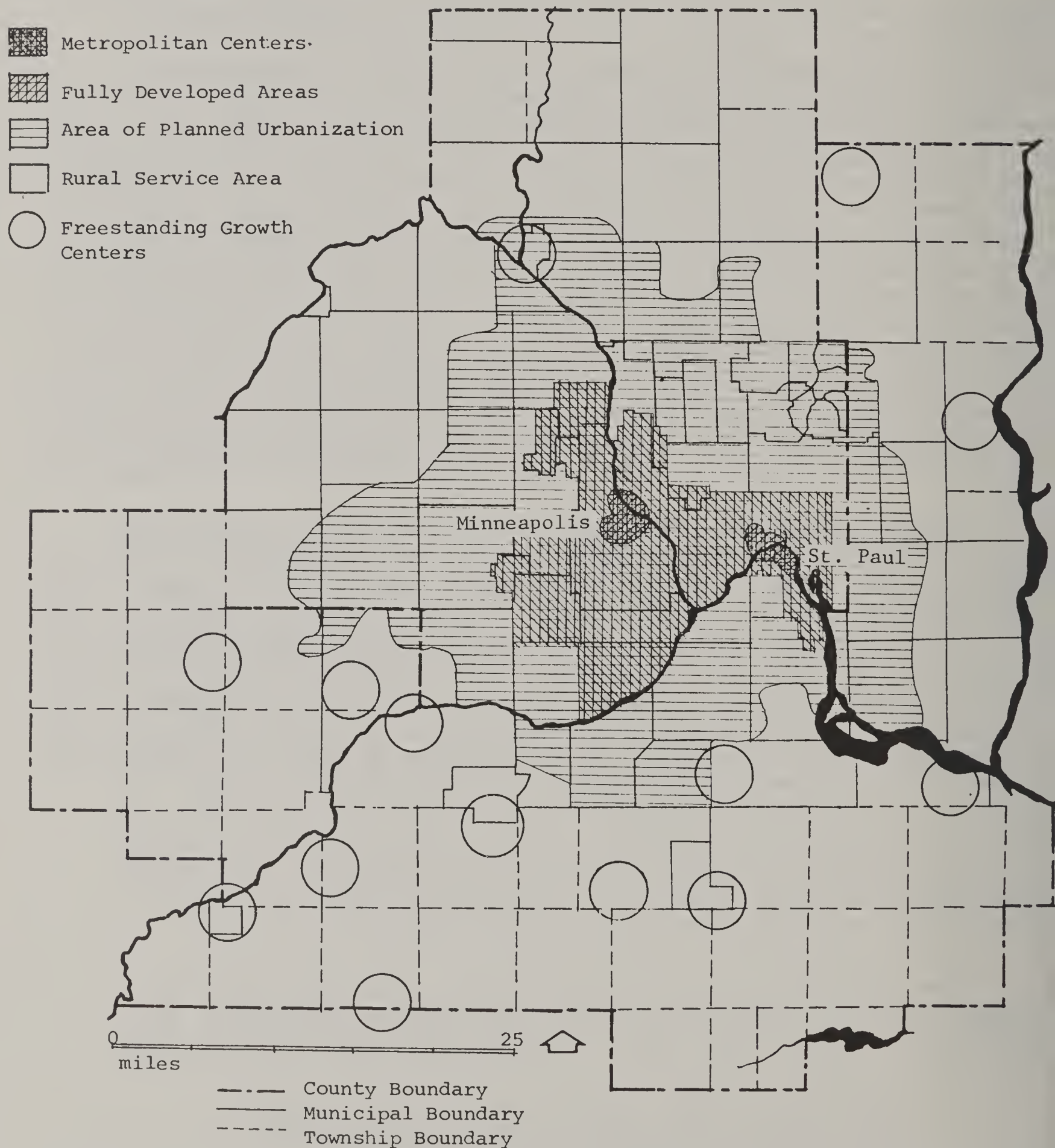
The delineation of an Urban Service Area and a Rural Service Area forms the basis of the Development Framework. The Urban Service Area includes the existing metropolitan centers (Minneapolis and St. Paul), fully developed suburban areas, an area of planned urbanization encompassing developing suburban areas, and a number of freestanding growth centers (small towns) located in the rural sections of the region. Future population growth and economic development are to be directed primarily to the area of planned urbanization and to a lesser extent to the freestanding growth centers in part through the provision of adequate public services and facilities such as sewers, highways, and transit. In contrast, the Rural Service Area is intended to remain primarily agricultural, and public investment in these areas is to be limited only to those expenditures required to maintain rural service standards.

The boundaries of the Urban Service Area are shown in Figure 14-2. As described in the Development Framework, the following criteria were used to define the Urban Service area:

1. The Urban Service Area in each sector should have enough developable land to accommodate the forecasted demand for urbanization.

Figure 14-2

TWIN CITIES DEVELOPMENT FRAMEWORK POLICY AREAS



Source: Metropolitan Council of the Twin Cities Area, Development Framework, 1975



2. The Urban Service Area in each sector should at all times include enough extra developable land for an additional five years of urbanization. The oversupply of land is thought to be needed to allow for locational choice within sectors, to accommodate slight variations in the projected growth rates, to provide adequate lead time for planning and construction of public services, and to dampen any tendencies toward inflation of land prices caused by shortages of developable land.
3. The Urban Service Area in each sector should permit reasonable economy in the provision of metropolitan services. It should maximize the use of existing investments in sewers, highways, parks, transit, and other metropolitan and local services. It should also minimize the cost of providing additional services.
4. The Urban Service Area should be defined in terms of time, and the boundaries should be expanded periodically to 1990 to meet forecasted need.
5. Areas with soils that present severe constraints to urban development should not be considered part of the potential supply of land for urban development.
6. Agriculture should be recognized as an important land use which is particularly vulnerable to urban pressures. Land well suited for commercial agriculture should not be considered part of the potential supply of land for urban development.

In addition, land to be served by any sewer extensions already planned at the time the MUSA (Metropolitan Urban Service Area) line was drawn was included in the urban area. The boundaries will be expanded in the future if population and housing forecasts indicate that more land will be needed to accommodate growth past 1990. The line may also be adjusted by the Metropolitan Council according to the needs predicted by local governments in their comprehensive plans, if these plans are in conformance with one another and with the general policies of the Development Framework.

As discussed in Section II, the Metropolitan Council controls investments made by regional commissions for interceptor



sewers and public transit, and has the power to approve or disapprove state-funded highway projects. In addition, comprehensive planning by local governments has been mandated by the state legislature, and the Council can veto any portion of a local plan which does not conform to metropolitan plans for sewers or transportation facilities. Thus, the Council has direct authority to implement the public investment policies of the Development Framework. The Council also makes recommendations to local governments regarding, among other things, the adoption of exclusive agricultural zoning in areas designated for long-term agriculture.

In sum, the primary purpose of the Development Framework is to provide a means for coordinating public planning, investment, and regulation consistent with broad regional policies. The preservation of long-term agricultural land, while certainly not the sole purpose of the growth plan, does represent a significant component of the integrated set of objectives, which mutually complement one another. For example, the preservation of farmland would tend to drive development into areas contiguous to the already urbanized areas, resulting in an economically efficient pattern of development from the standpoint of providing sewer service. Similarly, extending sewers efficiently, i.e., to areas adjacent to the urban areas, encourages large scale development in these areas rather than in long-term agricultural areas, thereby aiding the protection of farmland. The Development Framework is designed to facilitate the realization of these mutual public benefits. But weighing these goals with one another and against conflicting private and local interests has not always been a simple matter. The next section describes briefly the planning and political process which led to the adoption of the Development Framework by the Metropolitan Council and the passage of the Land Planning Act by the State Legislature.

### B. The Planning and Political History of the Development Framework<sup>5</sup>

#### 1. Background

As mentioned previously, the original 1967 legislative act which created the Metropolitan Council also directed it to prepare and adopt a comprehensive development guide for the purpose of promoting the "orderly and economic growth" of the Twin Cities region. But the urgent need to deal with specific problems such as water pollution caused the Council to focus its early planning efforts on individual functional areas. Thus, plans for sewers, solid waste, open space, rec-

reation, housing, and transportation were adopted prior to the development of an overall land use policy. Another incentive for concentrating on functional planning was the availability of federal funding (especially from EPA, HUD, and DOT) for such projects.

When the 1970 Census was published in the early 1970's, it became apparent that a significant shift in population and employment from the central cities to outlying areas was taking place. The Council and its planning staff began to assess the impacts of this shift on both existing urban centers and developing areas, and to formulate a comprehensive regional policy to address these issues. It was recognized that such a policy was needed before specific actions were taken which might affect the spatial pattern of future development; in other words, policy should guide implementation and hence should precede it.

In 1973, the Metropolitan Council took the first formal step towards developing a regional growth policy by forming a Physical Development Committee, composed of five Council members. The Committee was headed by Robert Hoffman, who had served for 14 years as a local official in a suburban community. The Committee had two major functions. It was responsible for reviewing all A-95 referrals, local comprehensive plans, and the capital budgets of the regional operating agencies. Its second task was to formulate the Development Framework policy.

Shortly after the Committee was organized, it established five primary purposes of the growth policy:

1. To achieve the orderly and economic growth of the Twin Cities Region by creating a development framework against which metropolitan plans and programs could be evaluated.
2. To establish a common frame of reference for planning carried out at the state, regional, county, and local levels.
3. To clarify and establish guidelines for interpreting existing Council policy.
4. To provide a basis for coordinating state, metropolitan, and local capital improvement programs.
5. To identify and propose the means for coordinating metropolitan development.



With these clear objectives in mind, the planning process was ready to proceed.

## 2. The Technical Planning Process

The Metropolitan Council's planning staff had first begun to think about growth management policies in 1971. It was decided that the plan should take the form of a policy framework to guide decision making rather than a detailed land use plan. The Development Framework would be prepared on the basis of three major assumptions:

- There should be no public policy to stop or limit the total amount of growth in the region
- Plans should be designed to make maximum use of existing public investment
- There should be no concern for preconceived or idealized physical forms for the region.

When the preparation of the Development Framework formally got underway in 1973, the staff prepared regional profile reports on environment, economy, public fiscal systems, population, and urban services. A major finding was that enough land was currently programmed for sewers to support the projected population in the year 2000 at a density significantly lower than the existing density of the urbanized area. In addition, it was found that sewers were being built to take care of isolated pollution problems rather than to encourage growth contiguous to already developed areas. In 1973 the staff also evolved the idea of five distinct geographic planning areas, i.e., the metropolitan centers, the fully developed area, an area of planned urbanization, a rural area, and free-standing growth centers.

Between 1973 and 1975 various planning studies were conducted in order to ascertain the probable impacts of the growth policy. Perhaps the most influential (and controversial) study was a public facility cost analysis for alternative future development scenarios. It was calculated that \$2 billion in public investment on roads, sewers, storm drainage, and water supply systems could be saved over 15 years if growth were guided to encourage infilling rather than permitting existing trends to continue. Another study assessed the possible effect of growth management on land prices in the region. While it was concluded that land prices inevitably increase as sewers and other public services and facilities are provided, the



study also pointed out the need to provide enough serviced land to ensure that prices would not escalate artificially due to an inadequate supply of such land relative to the demand.

The special problems of the declining central cities were addressed in a separate planning report. While these issues received much attention early in the planning process, they were not stressed in later discussions due to the overriding need to win support for the growth plan from representatives of suburban and rural areas. On the other hand, the issue of agricultural preservation was largely overlooked in the early stages of planning, although an agricultural study was prepared during the second round of policy analysis. This report emphasized the economic importance of agriculture in the region and the need for regional and local governments to adopt policies to protect agricultural land from continuing suburban encroachment.

The planning staff also prepared an "Implementation Discussion Statement" in 1974, which explored alternative ways to implement the regional growth policy. The possibility of expanding the Council's regulatory powers to include direct land use regulation was explored, but this proposal would have required new legislative authority and was considered politically infeasible. It was also suggested that the Council draw the Urban Service Boundary which would directly delimit the area where sewers would be provided. Eventually the idea of having local governments determine the limits of the MUSA line within their respective jurisdictions, subject to the approval of the Metropolitan Council, was accepted. This led to the concept of mandatory local comprehensive planning since three-quarters of the local governments had not yet adopted comprehensive plans. It was felt that if the growth policy were to be successfully implemented, an integrated multi-government approach was needed.

In the meantime, until local plans could be prepared, the Council staff drew a tentative urban service area boundary, based on information derived from the various planning studies as well as population and housing forecasts. One of the major criteria was that the urban service area must contain an oversupply of land to allow for locational choice, to accommodate unforeseen variations in growth rates, and to prevent an increase in land prices. In addition, most farmland was excluded from the supply of developable land. The boundaries also reflect each community's location relative to existing urban areas, the costs of sewerage the area, its population and

recent growth trends, and its capability to handle growth as evidenced by local services and planning efforts. The existing urban service area was expanded in less than half of the region, since in most areas there was already an abundance of land scheduled to receive metropolitan sewer extensions.

3. Public Participation and Political Decision-Making

While the planning staff provided the technical basis for the Development Framework, the Metropolitan Council actively sought the advice and input of citizens and officials throughout the region. The Council's basic philosophy was that policy involves politics, and that there must be an open public forum in which to test ideas and permit them to evolve, rather than restricting planning to the "back room". Robert Hoffman took the lead in presenting the Development Framework at public hearings. In addition John Boland, who was appointed Chairman of the Metropolitan Council in 1973, continually met with local elected officials throughout the region to seek advice and to try to win their support. Thus, it was the Council members, rather than professional planners, who opened up the lines of communication with local governing officials.

The Council also made other efforts to encourage public participation in the process of formulating the Development Framework. Specifically, a number of regional task forces were established to provide a formal communication link between the Council and local governments and private interest groups. Groups which formed task forces included the Minnesota Housing Institute, representing over 500 developers and contractors; the Association of Metropolitan Municipalities, composed of local government officials; the League of Women Voters; the Greater Minneapolis Chamber of Commerce; and the Citizens League, an independent, non-partisan educational organization.

The Citizens League, which conducts studies of major public issues and promotes its findings, was particularly important in stimulating public interest in growth management. In 1973, it published a report called Growth Without Sprawl, which, with the aid of a series of newspaper articles about leapfrog development, helped to create a political rhetoric against sprawl. The report documented the rapid pace of suburban sprawl and the accompanying fiscal and environmental problems, and argued that sewers and transportation alone do not shape urban growth and hence other local and regional controls are necessary. In addition, Professor Arthur Naftolin of the University of Minnesota, a former Mayor of Minneapolis,



held a five-session symposium on growth management at the University in 1974. The Metropolitan Council actively participated in this symposium. Again, extensive media coverage of the issues helped to raise the public consciousness regarding growth management.

While it was very difficult to accommodate all the recommendations of the various interest groups into one growth scheme, the Council members nevertheless took public participation seriously. All meetings of the Physical Development Committee were open to the public, and hearings were held even in the initial stages of policy planning. According to Hoffman, substantial changes were made in the Development Framework as a result of these hearings. For example, an early motive of the plan was to "save the cities"; however, this approach was not viewed favorably by the non-urban representatives of local governments, who felt their needs and problems were being overlooked. Thus, in 1973 the emphasis changed to promoting rational and efficient growth in the urban fringe. The urban representatives apparently accepted this shift in priorities, since it was hoped that controlling suburban sprawl would indirectly encourage growth and redevelopment in the cities.

Another major policy shift occurred late in the development framework planning process--the recognition that agriculture should be considered a priority land use rather than simply a "leftover" category. This change in attitude was partly a result of revised population and housing forecasts which showed that large amounts of land in the region would not be needed to accommodate urban growth, at least in the foreseeable future. Hence it seemed logical to keep the land productive if possible. Also, many farmers in the rural areas were committed to farming and made their views known to the Metropolitan Council. In response to this re-evaluation of the importance of agriculture in the region, the Council in 1975 appointed a Technical Advisory Committee on agriculture, made up of local planners, extension agents, and farmers. The Committee and Council staff members subsequently prepared an Agricultural Planning Handbook (1976) for use by local planners and officials. Among other things, the handbook recommended the designation of long-term agricultural areas located in the rural service area and agricultural zoning in such areas.



4. Adoption of the Framework and Passage of the Land Planning Act

The Development Framework was finally adopted in 1975, after 70 meetings of the Physical Development Committee, 200 public meetings, 20-30 media programs, three cycles of formal public hearings, and a huge amount of staff work. The final plan called for local governments to formulate individual comprehensive plans in coordination with metropolitan systems plans. Thus the next step was to recommend a bill to the state legislature which would make local planning mandatory and subject to Council approval. The Council, however, ran into difficulties when it first tried to get the Land Planning Bill passed in 1975.

The local officials in the regional task force had supported the Development Framework, but most represented communities within the Urban Service Boundary. Developers were generally opposed to the growth management plan, and the Minnesota Housing Institute organized a movement against the proposed legislation. Opposition to the Metropolitan Council was particularly strong in Dakota County, where the County Board temporarily refused to pay regional taxes. One of the County's major complaints was that rural areas were inadequately represented on the Council, since Council members represent districts of equal population size. An influential State Senator, George Conzemius, whose district included rural Dakota County, led the floor fight against the planning bill. Due to the considerable amount of controversy it generated, the bill failed to pass in 1975. In 1976, however, the Land Planning Act became law, culminating the long process of creating the legal framework for a workable multi-governmental growth management strategy.

5. Factors Contributing to the Successful Adoption of a Regional Growth Management Policy

It is difficult to pinpoint any single reason why the Twin Cities Metropolitan Area was able to adopt a relatively strong growth management policy. A number of theories have been suggested in the reports prepared by Knudson and Reichert. First, the preexisting authority of the Metropolitan Council to collect its own regional tax revenues enabled it to conduct comprehensive planning studies in addition to the functional planning funded by the federal government. In addition, the existence of regional operating agencies, notably the Metropolitan Waste Control Commission, and the policy authority of Metropolitan Council over these agencies, obviously

gave the Council at least one clear means of implementing a growth policy. As noted previously, the legislative endorsement of the concept of a strong regional government originally stemmed from the recognition that individual communities were unable to cope with the severe lake pollution problems in the area in the late 1960's.

Another factor which contributed to the successful adoption of the Development Framework was the extensive interaction between the Council and strong interest groups, including local officials and housing developers. The willingness of the Council to get involved politically with diverse local interests promoted a spirit of cooperation, at least with most of these groups. Nevertheless, it was probably equally important that the Council, comprising appointed rather than elected members, was able to stand above politics to some extent. Furthermore, it has been argued that since Council members represent districts of equal population size, and since it was the densely populated cities and suburbs located within the Urban Service Boundary which mostly supported the Development Framework, the opposing interests of the outlying areas were inadequately represented. It was this perception which raised the ire of the rural officials in Dakota County. In fact, the structure of the Council probably did facilitate its acceptance of the Development Framework.

The planning staff has also been credited with winning support for the Development Framework, due to its ability to communicate its ideas effectively to the Council. Finally, a perhaps unique combination of social, physical, and economic conditions in the Twin Cities region undoubtedly promoted public and legislative approval of the growth management concept. The Twin Cities area has a stable economy and is generally considered to provide a high quality of life, which its residents want to protect. In addition, a number of influential citizens groups, notable the Citizens League, actively sought public support for growth management. Another important circumstance which enabled the Council and other groups to lobby the state legislature effectively is the fact that the State capital is located in St. Paul; thus, legislators and Council members, as well as local officials, private interest groups, and the affected public are all in the same geographic location. The ability of the Council and others to promote their ideas in the legislature has undoubtedly been enhanced by this spatial proximity.



6. Current Implementation Status of the Regional Growth Policy

According to members of the Metropolitan Council planning staff, the Council's single most successful tool for implementing the growth policy is its control over the location and timing of sewer construction in the region. In addition to its direct authority over the Metropolitan Waste Control Commission, which builds and operates interceptor sewers and treatment plants in the regional system, the Council also has certain means to restrict local communities or private developers from installing local collection and treatment systems not in conformance with the regional waste management plan. Specifically, any local government must prepare a local sewer plan in accordance with the Council's plan before it can undertake to construct or alter any part of its disposal system. Such plans must be approved by the Metropolitan Waste Control Commission, and all proposed sewer projects must be in conformance with the approved plan. In addition, a permit must be obtained from the Minnesota Pollution Control Authority for the construction or modification of any sewer system, and a copy of the permit application must be sent to the Metropolitan Waste Control Commission for comment. The Authority and the Commission have a good working relationship, and, according to Council staff members, it is highly unlikely that a permit would be granted over the objections of the Commission.

In the unlikely event that the Pollution Control Authority did grant a permit for construction of a local community sewer system which was inconsistent with regional policy, there would still be two options available to the Council which might prevent the project from getting underway. First, since the Council is the A-95 review agency, if federal funding is to be used for the project, the Council might be able to persuade the federal agency involved (probably either EPA or the USDA Farmers Home Administration) to withhold the funds. In addition, the project could be reviewed by the Council under the procedures outlined in the Rules and Regulations for the Review of Matters Alleged to be of Metropolitan Significance. If the project is found to be of metropolitan significance, it can be enjoined for up to a year. Thus, while the Council's control over sewer construction throughout the region is not absolute, it is nevertheless very strong. So far, no sewer systems have been installed in rural areas against the recommendations of the Council or the Waste Control Commission. Preventing the extension of sewer lines into agricultural areas precludes high density development in these areas.



The Council has also adopted a regional transportation policy plan. The plan is implemented according to a transportation development program prepared by the Metropolitan Transit Commission, which owns and operates the public transit system in the Twin Cities. The present public transit system consists almost entirely of busses serving the developed areas of the region. The Council also has the power to approve or disapprove a state or local plan to construct limited access highways in the metropolitan area. Regional policy dictates that improved transportation facilities and services are to be provided only within the boundaries of the Urban Service Area, thus encouraging future development in that zone rather than in farming areas.

The regional systems plans and development programs for sewers and transportation which were prepared in accordance with the Development Framework policies have been in effect since their adoption in 1975. The local comprehensive planning program, which is intended to involve all local governments in land use and facilities planning consistent with metropolitan systems plans, is not yet complete. Local governments are now in the process of submitting their plans to the Metropolitan Council for review and approval. The Council will refine the boundaries of the Urban Service Area using the local plans. As part of its review function, the Council is recommending to the local governments that they adopt restrictive zoning regulations (a maximum density one new dwelling unit per 40 acres) for designated long-term agricultural areas if they have not already done so. However, the Council cannot force counties or townships to adopt farm use regulations, since its veto power applies only to those portions of the local plans which conflict with regional functional plans for sewers, transportation, and other metropolitan systems (i.e., open space, recreation, airports, solid waste disposal). Nevertheless, it appears that many communities are willing to adopt agricultural zoning, particularly since zoning is a prerequisite for qualifying as an agricultural district under the recently passed Agricultural Preserves Act of 1980 (See discussion in Section IV).

#### C. Perceived Regional Effects of the Development Framework

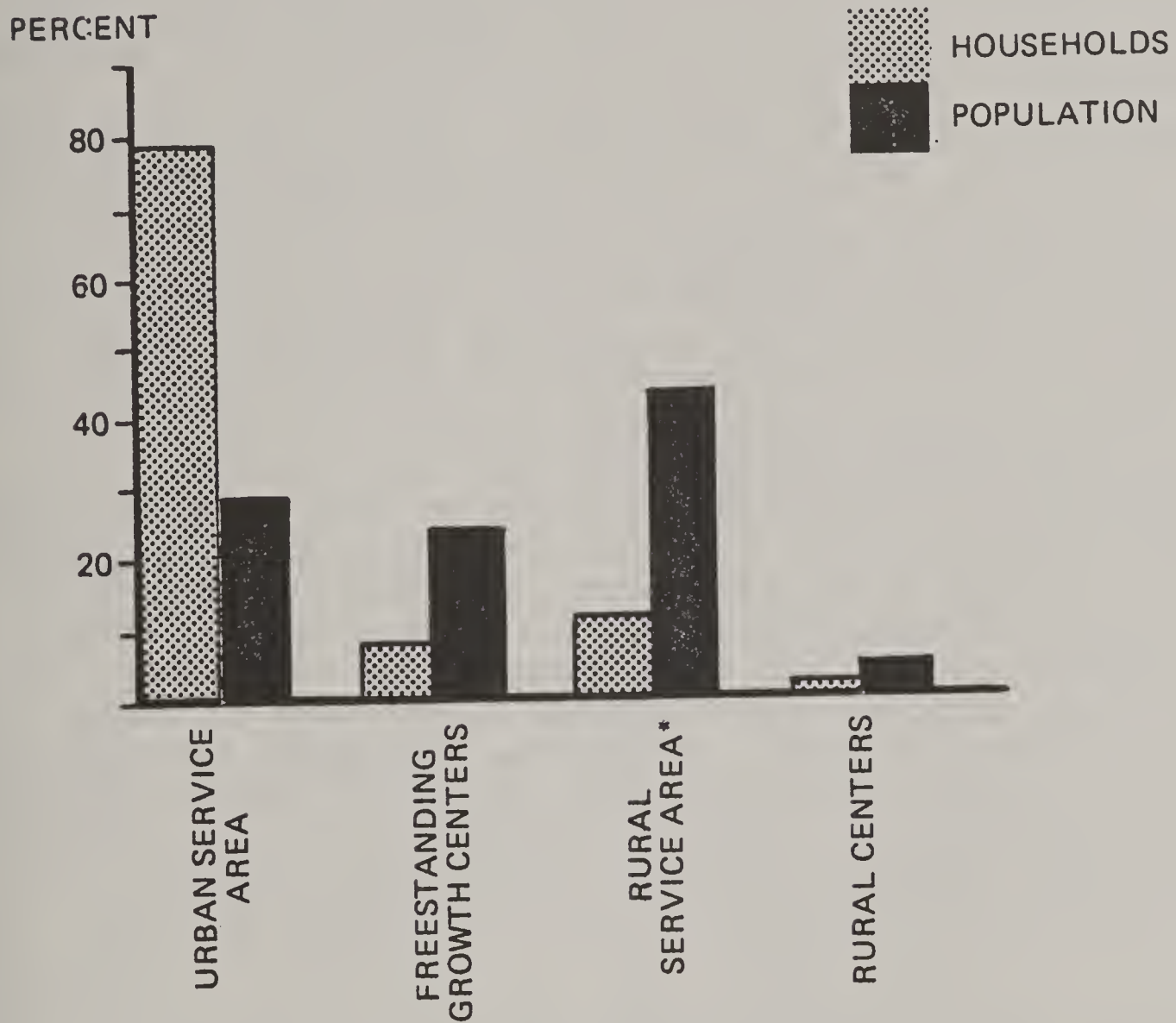
Assessing the effects of the adoption of the growth management policy on the spatial pattern of development in the Twin Cities Region is problematic at this time, particularly since the major implementation strategy of mandatory local land use planning and regulation is still pending. Furthermore,

while the policy plans for public facilities were adopted pursuant to the Development Framework in 1975, it is difficult to interpret the effects of this program, since the policy framework was intended to guide future decisions regarding sewer extensions. It did not suddenly restrict rural areas from development, since to the extent that these areas were not at the time programmed for sewers, they were already somewhat restricted. And as noted previously, areas which were already planned to receive sewers in 1975 were automatically included in the newly defined urban service area. In effect, nothing changed in 1975, except that it was made known that at least in the short run, future regional capital investments would be made within the boundaries of the Urban Service Area, and long-term investments would occur in areas contiguous to the existing urban service area if population growth trends indicated that additional urban land would be needed. Thus, one would expect that the impact of the investment policy in containing urban sprawl would be delayed for at least several years.

Nevertheless, it may be helpful to examine the growth in households and population from 1970 to 1978 in order to ascertain if any clear effects of the growth policy can be discerned thus far. Figure 14-3 shows the relative shares of growth in the major Development Framework planning areas during the eight-year period. As discussed previously, the Urban Service Area encompasses the central cities, fully developed suburbs, and developing suburbs. Freestanding growth centers include various small towns and cities located in the outlying parts of the region that are planned for growth in order to provide housing opportunities for those who desire to live in small towns. The rural service area contains about 90 percent of all the agricultural land in the region, as well as other rural land. Rural centers are small towns which have not been designated as growth centers.

It can be seen that the increase in the number of households follows a markedly different trend than the growth in population. The Urban Service Area accounted for nearly 80 percent of the increase in households throughout the region, while it represented only less than 30 percent of the population growth. Together, the Urban Service Area and the Freestanding Growth centers accounted for 88 percent of the growth in households and 52 percent of the growth in population. Meanwhile, the rural service area had the largest single share (44 percent) of population growth. The reason that the shares of household and population growth vary so widely is that average household size has decreased dramatically in the urbanized areas. In fact, regionwide, the population expanded by 116,148 persons

Figure 14-3  
SHARES OF 1970 - 1978 GROWTH IN POPULATION AND HOUSEHOLDS  
FOR MAJOR DEVELOPMENT FRAMEWORK PLANNING AREAS



\*DOES NOT INCLUDE RURAL CENTERS

Source: Twin Cities Metropolitan Council.



form 1970 to 1978, while the number of households showed a net increase of 147,820 during this period. Tables 14-4 and 14-5 show the specific numerical relationships of population and household growth in the four planning areas.

It is clear from these data that the rural service area has accounted for at least a substantial portion of the population growth in the Twin Cities Region since 1970. But this does not tell us what effect the adoption of the Development Framework in 1975 may have had in reducing the rate of development in the Rural Service Area. Figure 14-4 shows the percent of all new housing in the Metropolitan Area which was built in the rural service area in each year from 1970 to 1979. The solid line shows the percentage of single-family dwelling constructed in the rural area, while the dashed line represents the proportion of all housing units built there. Since nearly all of the housing built in rural areas which lack sewers are single-family detached units, the rural area's share of single family housing construction is higher. The graph shows that the rural area's share of housing construction accelerated quickly until 1973, and then abruptly fell. Since 1975, when the Development Framework was adopted, the rural area's share of housing growth has declined slightly. But it is difficult to draw any clear conclusions concerning the effects of the regional growth policy on the pace of rural development from this graph. While the proportion of single-family units built in the rural area declined from 22 percent in 1970 to 16 percent in 1978, the percentage of total housing units built actually increased, indicating a decline in the construction of multi-family units during this period.

There is no simple explanation for the sudden rise and fall of the rural area's share of development in the period from 1972 to 1974. Population estimates by minor civil division show that this pattern was evident in most of the rural counties. However, the observations of the agricultural extension agent in Dakota County, Warren Sifferath, are enlightening. He pinpointed 1973 as a turning point in the attitudes of farmers in that county toward urban sprawl and the future of farming. Until that point, he says that most farmers felt that the spread of urbanization throughout the county was imminent and inevitable, and that as a result many farmers, especially those closer to the suburban areas, were rushing to sell their land to speculators and developers. But in 1973 and 1974 a number of factors combined to lessen the demand for rural housing and the farmers' doubts about the viability of long-term farming in the county. For one thing, declining school enrollments and a decrease in the rate of population growth throughout the region indicated that

Table 14-4

## HOUSEHOLD AND POPULATION CHANGES FOR DEVELOPMENT FRAMEWORK POLICY AREAS 1970 AND 1978

	Households, 1970-1978			Population, 1970-1978			Ratio of Population Increase to Household Increase
	Net Increase	Percent Increase	Share of Total Increase	Net Increase	Percent Increase	Share of Total Increase	
Metropolitan Urban Service Area (MUSA)	117,659	22.4	79.6	33,268	2.0	28.9	0.286
Freestanding Growth Centers	12,038	54.6	8.1	27,267	34.8	23.5	2.265
Rural Service Area	18,123	68.3	12.3	55,253	53.2	47.6	3.049
Rural Centers	2,064	36.9	1.4	4,743	23.7	4.1	2.298
Remainder of Rural Service Area	16,059	76.8	10.9	50,510	60.2	43.5	3.145
Regional Total	147,820	25.8	100.0	116,148	6.2	100.0	0.786

Table 14-5

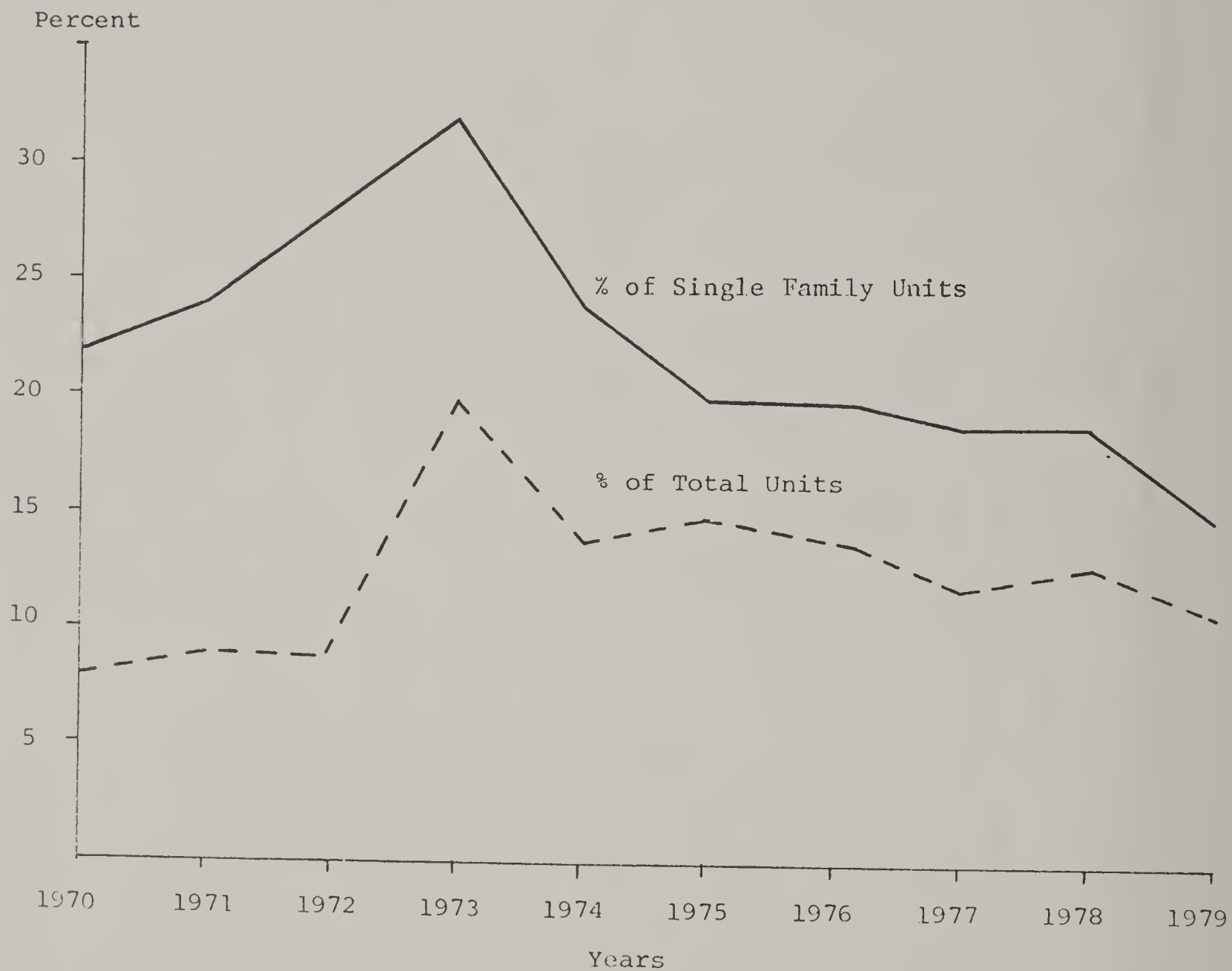
## PEOPLE PER OCCUPIED HOUSING UNIT, 1970 AND 1978

Policy Area	1970	1978 (est.)	Percent Change
Urban Service Area	3.15	2.62	-16.8
Fully Developed Area	2.87	2.41	-16.0
Freestanding Growth Centers	3.46	3.05	-11.8
Rural Service Area	3.85	3.52	-8.6

Source: Twin Cities Metropolitan Council.

Figure 14-4

PERCENT OF HOUSING UNITS BUILT IN  
RURAL AREA OF THE TWIN CITIES REGION





the metropolitan area was not going to grow nearly as rapidly in the future as it had in the past. Mortgage money was also tight during 1973, and the first gasoline shortage occurred, thus forcing people to think twice about living too far from work. In addition, the price of corn and other agricultural products went up in 1973, making farming much more profitable. In addition, Mr. Sifferath noted that an anti-sprawl sentiment was becoming prevalent in the region, and that the commencement of the Metropolitan Council's work on the Development Framework caused farmers and speculators to question whether agricultural areas would be permitted to develop. As a result of all these considerations, in 1973 fewer farmers were willing to sell their land, and farmers also started to bid competitively for the land that was being sold and resumed making long-term investments in their farms. It is likely that at least certain elements of this scenario occurred in other rural counties as well.

Thus, one can infer that the Development Framework helped to slow the rate of development in the rural area in 1973-74 and stabilize it thereafter, although it was probably only one of several relevant factors. And the fact remains that there has still been a considerable amount of growth and development in the rural area in recent years, resulting in the continuing loss of farmland. The major problem has been that the Metropolitan Council possesses no power to control low density development which uses septic systems instead of public sewer systems. It is this type of development which would be most likely to occur in the rural areas even if there were no Development Framework, and it is this type of development which also tends to use up land at a faster rate.

According to members of the Metropolitan Council staff, another potential problem with using sewers as a growth management mechanism is that the federal Clean Water Act requires the U.S. Environmental Protection Agency, which provides most of the funding for sewer construction, to use these funds to abate pollution problems rather than to manage growth. Apparently, future sewer plans of the Council may include extending sewers into certain areas northwest of Minneapolis which are contiguous to the existing urban service area, in order to encourage growth in this area. There is some question as to whether EPA would fund this project, since pollution problems might be considered more severe in other areas farther out, which would require extending sewers through undeveloped areas. EPA, however, is currently in the process of reevaluating its construction grant program in light of growth management issues, so this potential conflict may be avoided.

But the problem of extensive low-density development in agricultural areas remains. Only the county and local governments have the authority to zone areas for agricultural preservation. For this reason, many of the persons interviewed felt that the Land Planning Act is the key to making the Development Framework work and ensuring the preservation of farmland. As noted previously, the Metropolitan Council cannot force local governments to adopt agricultural zoning. However, as part of its technical review function, it is recommending the designation of long-term farming areas and the adoption of agricultural zoning in these areas. Because planning was made mandatory by the Act, many communities are for the first time thinking seriously about their future, and many are responding favorably to the concept of agricultural zoning.

Some communities, however, still have reservations about restricting landowner's right to sell land for development purposes, particularly if there are doubts about the future economic viability of farming. The Metropolitan Council responded to this problem in 1979 by proposing an agricultural preserves bill which would tie agricultural zoning to a variety of economic benefits for farmers in the metropolitan area. This bill was recently enacted into law by the Minnesota legislature. Because of its importance to the effort to preserve farmland in the Twin Cities region, it is discussed separately in the next section.

IV. THE AGRICULTURAL PRESERVES ACT

Since the adoption of the Development Framework in 1975, the Metropolitan Council has made an effort to formulate more direct policies relating to agricultural land preservation. In 1978 a Rural Area Task Force was formed to address the special issues facing the rural community in the Twin Cities region. Fifty-seven people, including many farmers, local officials, the members of the real estate industry, served on the Task Force. (Two members of the Task Force were subsequently elected to the state legislature.) Three committees were formed to study the problems of three distinct types of rural areas: long-term agricultural areas, general rural use areas which are not suited to commercial agriculture, and rural centers, or small towns not designated as freestanding growth centers. The agricultural preservation committee was an outgrowth of the technical advisory committee on agriculture formed in 1975 as part of the Development Framework planning process.

The Rural Area Task Force published a report to the Metropolitan Council in 1979 which presented a set of policy recommendations for each of the three rural use areas. The consensus of the agriculture committee was that commercial farmland in the region should be preserved for the following reasons:

- The majority of farmers in the Metropolitan area are committed to farming.
- Much of the farmland is highly productive.
- Farmers have a substantial capital investment in their farms.
- Much of the land has been carefully prepared and managed for productive farm use.
- Most of the land is not needed for urban development, since there is more than enough land in the urban service area to support development needs at least through 1990.

The members of the committee also felt that uncertainty about the future of agriculture, or the "impermanence syndrome" is a much more significant factor in the decline of farming in the region than the actual conversion of some parcels to residential use. The manifestations of this uncertainty include the postponement of capital investments, the deteriora-



tion of farm management practices, and the reluctance of children to take over farms.

In order to alleviate the problems associated with the impermanence syndrome as well as to prevent prime land from being developed, the task force committee recognized the need for local planning and zoning to protect agricultural land. At the same time, however, they thought that zoning would not be enough, because it would work only if the demand for developable land were not too great. Zoning could be overturned by local governments if development pressures became more intense. It was felt that a crucial consideration was to maintain the economic viability of farming, and hence there was a need for new state legislation designed to protect farmers from government policies and actions which tend to undermine farming, such as high property tax rates, special assessments for sewers and roads, and annexation of agricultural areas. The task force therefore outlined the major elements of an "Agricultural Preserves Act," which it recommended be adopted by the state legislature. The task force also felt that there should be more rural representation on the Metropolitan Council and that an ongoing rural area advisory committee should be established.

The Council reacted to the report of the rural area task force by providing staff assistance in drafting the bill and working to seek legislative and public support for the proposal. The bill was introduced to the State Legislature in 1979, and was passed by both houses in March 1980. The law applies only to the Twin Cities region, for political reasons. As stated in the Act, its purpose is "to provide an orderly means by which lands in the metropolitan area designated for long term agricultural use through the local and regional planning process will be taxed in an equitable manner reflecting the long term singular use of the property, will be protected from unreasonably restrictive local and state regulation of normal farm practices, will be protected from indiscriminate and disruptive taking of farmlands through eminent domain actions, will be protected from the imposition of unnecessary special assessments, and will be given such additional protection and benefits as are needed to maintain viable productive farm operations in the metropolitan area".

What makes this law unique among agricultural districting laws is that it directly integrates agricultural zoning at the local level with the provision of economic and other benefits to farmers who participate in the program. To be eligible as an agricultural preserve, parcels must be 40 acres

in size and must be "long-term agricultural land," which is defined as land in the metropolitan area designated for agricultural use in the local or county comprehensive plans adopted and reviewed by the Metropolitan Council, and which has been zoned specifically for agricultural use permitting a maximum residential density of not more than one unit per quarter-quarter<sup>6</sup> or 40 acres. Commercial and industrial uses are strictly prohibited in an agricultural preserve except for small on-farm operations.<sup>7</sup> Thus, agricultural zoning is a prerequisite to eligibility as an agricultural preserve. This may prove to be a powerful incentive for previously reluctant communities to adopt quarter-quarter zoning, at least in Dakota County, where a county planner indicated that acceptance of agricultural zoning in many townships was contingent upon passage of the Agriculture Preserves Bill.

The local or county governments are responsible under the Act to map and certify all lands which are eligible for designation as agricultural preserves. Land ceases to be eligible if the local comprehensive plan and zoning for the land has been officially amended to allow for a residential density higher than one dwelling unit per 40 acres or other urban land use. In order to designate certified farmland as an agricultural preserve, the owner simply submits an application to the local governing body, which forwards copies to the county recorder, the county auditor, the county assessor, the Metropolitan Council, and the county soil and water conservation district. The Metropolitan Council is to maintain maps of the entire metropolitan area showing all certified long-term agricultural land and all lands which have been designated as agricultural preserves.

The landowner can initiate expiration of the agricultural preserve designation by notifying the local or county governing body, but the date of expiration must be at least eight years from the date of notice. Likewise, the county or township may also initiate the eight-year expiration period. Early termination is permitted only in the event of a public emergency and in the event of early termination all special assessments plus interest must be paid within 90 days.

The specific benefits which farmers derive from having their land classified as an agricultural preserve can be described briefly as follows. First, all land in agricultural use, exclusive of buildings, is to be assessed at its farm use value as determined by the state commissioner of revenue.<sup>8</sup> In addition, the property tax rate on agricultural land and nonresidential buildings shall not exceed 105 percent of the



previous year's statewide average township mill rate for all purposes. The state reimburses local taxing jurisdictions for revenues lost as a result of this provision. Second, any construction projects for public sewer or water systems are strictly forbidden in agricultural preserves, and such systems built in the vicinity of agricultural preserves are deemed of no benefit to the land and buildings in the preserve. Local governments are also prohibited from enacting ordinances in agricultural preserves which would unreasonably interfere with normal farming practices unless the restriction is directly related to the public health and safety. A legislative committee is also directed to examine the potential adverse effects of certain state regulations on long-term agricultural lands, including those related to air and water pollution control. Finally, annexation and eminent domain actions of government are subject to stringent review processes designed to ensure maximum consideration of the effects on agricultural preservation.

In addition to the zoning restrictions, land within an agricultural preserve is to be farmed in accordance with sound soil and water conservation management practices. Upon receipt of a complaint, if the Soil and Water Conservation District in conjunction with the local governing authority finds that the land is not being properly managed, the landowner may be required to implement corrective action or be subject to a fine of not more than \$1,000. Thus, the farmers are subject to certain obligations as well as benefits under the Act.

The State of Minnesota Department of Revenue has estimated that the agricultural preserves program will cost the State \$851,755 for fiscal year 1982. This sum represents state payments to counties to compensate for the loss of tax revenues to counties in which the application of the mill rate of 105 percent of the statewide average is less than the current mill rate. This figure was based on the Metropolitan Council's estimate of the agricultural land which would be eligible under the program and information regarding county and local property tax rates throughout the region. It was assumed that 90 percent of the eligible area would approve sufficient zoning regulations to qualify for the program, and that tax levies statewide would increase at an average annual rate of 8 percent. The estimated state reimbursement to the seven counties in the metropolitan area in fiscal year 1982 is listed below:



Anoka	\$ 5,706
Carver	169,502
Dakota	19,068
Hennepin	122,260
Ramsey	0
Scott	446,067
Washington	89,152
	<u>\$851,755</u>

The farm use assessment program is not expected to affect property tax revenues to any significant degree, since most of the land is either currently assessed at use value under the preexisting Green Acres Law or is not substantially subject to urbanization pressures.

In sum, it is apparent that the Minnesota Agricultural Preserves Act is designed to not only provide certain benefits to farmers to encourage them to continue farming, but also to provide a strong incentive for local governments to adopt zoning regulations which virtually prohibit any type of development in agricultural areas. While the Metropolitan Council has a limited role to play in the administration of the Act, it is the agency which organized the Rural Area Task Force to investigate the problems and needs of farmers in the region and to propose ways of promoting agricultural preservation. And it was the Council and its planning staff who, with the help of interested legislators, drafted the bill and lobbied for its approval in the legislature. It should be noted that the interest of the Metropolitan Council in the preservation of agricultural land is not limited to a desire to protect a source of food production, environmental quality, or the aesthetic character of the region. It is also rooted in the pragmatic philosophy of the Development Framework, which recognizes the inefficiency of urban sprawl from the standpoint of providing public services to residents. As one Council staff member noted, measures which are taken to preserve agricultural land beyond the boundaries of the Urban Service Area benefit not only the farmers who wish to continue farming but also urban residents who will pay lower public service costs by not having sewers and other public facilities extended unnecessarily to accommodate leapfrog development. Thus, from a regional perspective, agricultural preservation can have a variety of beneficial effects.

V. ATTITUDES TOWARD AGRICULTURAL PRESERVATION AND REGIONAL GROWTH MANAGEMENT IN CARVER AND DAKOTA COUNTIES

The preceding discussion has focussed on the policies and programs of the Metropolitan Council. In this section we briefly explore the attitudes of local planners, government officials, farmers, and realtors towards the various programs affecting agricultural land which have been promoted or implemented by the regional government. Carver and Dakota Counties were chosen for study since both contain large amounts of agricultural land, but at the same time, they represent an interesting contrast in terms of policies concerning the regulation of agricultural land.

A. Carver County

Carver County is the most heavily agricultural county in the Metropolitan Area, with an estimated 87 percent of its land in farms.<sup>9</sup> Table 14-6 shows statistics on acres of cropland planted and number of livestock for 1978 and cash income received by farmers in 1977. The bulk of the farm income in the county is derived from livestock, and dairy farming is especially important. Most of the 181,000 acres of cropland in the county are planted in corn, soybeans, hay, and alfalfa. Most of the crops are fed to livestock rather than sold directly. In 1977, the average sales price of farmland in the county was \$1,596<sup>10</sup> per acre, as compared with a statewide average of \$859/acre. The higher price of farmland in the county can be attributed to the relatively high productivity of the land, its location close to markets, and perhaps urbanization pressures, although much of the land has been protected under agricultural zoning since 1974, as will be discussed later.

The population of Carver County increased by 31 percent from 1970 to 1978, from 28,331 persons in 1970 to 37,060 in 1978 (or 103 persons per square mile). Table 14-7 shows the growth in population for the major Development Framework planning areas. The Urban Service Area in Carver County encompasses only two designated Freestanding Growth Centers and a small area of planned urbanization. The remainder of the county is included in the Rural Service Area.

It can be seen that the Freestanding Growth Centers accounted for the largest portion of population growth in the county as well as the highest rate of growth. Together, the Freestanding Growth Centers and the Urban Service Area bore 64 percent of the County's growth, while the rural areas, including rural centers (small towns) assimilated only 36 percent of the growth. Throughout the metropolitan area, 48 per-

Table 14-6

## CARVER COUNTY FARMING STATISTICS--1978

Acres of Cropland Planted

Corn	70,900
Soybeans	17,300
Wheat	5,100
Oats	12,500
Barley	300
Hay	40,700
Alfalfa	<u>34,200</u>
Total	181,000*

Number of Livestock

Cattle and calves	51,400
Milk cows	24,100
Sheep and lambs	1,100
Hogs and pigs	33,900
Chickens	<u>45,000</u>
Total	155,500

Gross Cash Income in 1977 (thousand dollars)

Crops	\$ 7,988
Livestock	34,295
Government Payments	<u>284</u>
Total	\$42,567

\* The total land area of the county is 229,171 acres.

Source: Minnesota Agricultural Statistics--1978,  
Minnesota Crop and Livestock Reporting  
Service.



Table 14-7

POPULATION GROWTH, 1970-1978 IN CARVER COUNTY BY  
DEVELOPMENT FRAMEWORK POLICY AREAS

	<u>Number of New Residents</u>	<u>Percent Increase in Number of Residents</u>	<u>Percent Share of Total Increase in the County</u>
Urban Service Area	1,649	28	19
Freestanding Growth Centers	3,933	58	45
Rural Service Area	<u>3,147</u>	<u>20</u>	<u>36</u>
County Total	8,729	31	100

Source: Twin Cities Metropolitan Council.

cent of the population growth occurred in the Rural Service Area (see Figure 3). Thus, Carver County experienced proportionately less rural development than did the region. This is somewhat remarkable in view of the fact that very little of Carver County's land is included in the urban service area (see Figure 2 showing the boundaries of the Development Framework Planning Areas).

Thus, in Carver County it appears that the impact of urbanization on farming areas may not be too severe, or at least not as severe as in other parts of the region. This is not surprising, in light of the fact that Carver County governing officials have taken an active role in promoting the preservation of farmland since 1970. In this county, unlike Dakota County which has a special form of government, the county governing body prepares land use plans, provides most public services, and has zoning powers in the unincorporated areas of the county, which includes all townships and most of the farmland. Townships may also plan and zone, but their regulations must be at least as stringent as the county's. Incorporated towns and cities govern themselves, and as the cities expand they are usually able to annex areas adjacent to the town where the growth is occurring.

In the late 1960's Carver County planners and officials began to recognize the threat that urban sprawl posed to agriculture, which is the most important industry in the County.

Thus, in 1970 the county adopted an interim zoning regulation for all farmland which restricted the minimum residential lot size in farm areas to  $2\frac{1}{2}$  acres. It soon became clear that this restriction was not adequate to stem the flow of suburban expansion, so in July of 1972 the minimum house lot size was increased in five acrea. But again, six months later it was apparent that even the five-acre minimum could not significantly slow the pace of development and in fact was resulting in large amounts of farmland being used for each subdivision. Thus, in late 1972 a temporary moratorium was placed on all subdivisions until the county could devise a more workable plan to protect agriculture. Finally in 1974 the quarter-quarter zoning regulation was adopted, which permits a maximum residential density of one dwelling unit per 40 acres of farmland. This is equivalent to 16 dwelling units per square mile. Commercial and industrial uses are prohibited. This restriction applies to all actively farmed land in the unincorporated parts of the county.

According to the planners and farm industry representatives, the support for farm use zoning had come largely from the farmers in the county. The Township Officers Association, which is composed of local officials representing the rural portions of the county, was particularly instrumental in developing public support for agricultural preservation. Apparently most farmers were permanently committed to farming, partly because of the importance of dairy farming in the county, which requires a large capital investment. In addition, much support industry was still located nearby, notable two large dairy products firms (Oak Grove Dairy and Bongardes Creamery). The combination of a general commitment to farming and a growing awareness among farmers of the basic incompatibility of suburban development and agricultural operations led to the support of the land use restrictions aimed at protecting agricultural land. In addition, there was a fear that without such restrictions, the political balance of power in the county might start to shift from the agricultural community to the suburbanites. At present, three of the five County Commissioners are farmers.

Everyone interviewed in the county agreed that the agricultural zoning had given farmers a greater sense of security and permanence, and that as a result farmers were making long term investments in their farms. Apparently, farmland prices have also stabilized since the passage of the ordinance, and the rate of development has slowed, at least in some areas. Of course, a minority of farmers, especially those who are close to retirement, as well as land speculators and developers,



were opposed to the adoption of the ordinance; at least insofar as it applies to all actively farmed land in the county. One realtor expressed his views as follows. He felt that a distinction should be made between the area to the west and south of Routes 10 and 43 and the remainder of the county. In the former area, the soils are very good, the land is extremely flat and intensively farmed, and its location is relatively distant from the metropolitan centers. The 40-acre zoning works well here, he said, since it gives farmers a sense of permanence and there is very little residential demand anyway, because the landscape is too flat and open and it is too far from employment centers.

On the other hand, the realtor thought that the 40-acre zoning is on the whole inappropriate for the area east and north of Routes 10 and 43, where the soils are less productive, the topography is rolling, and there is an aesthetically pleasing mix of woodland and open land (about half of this area is unincorporated). In this area, which extends to the border of Minneapolis, there is some demand for residential development, and the realtor felt that residential development is the most appropriate use for the land. Therefore, he objected to the application of the agricultural zone to all active farmland and thought that the ordinance should be more flexible to accommodate future growth pressures. In addition, there are some examples of farmers in this region who are ready to retire and have no children who want to take over the farm, and the realtor felt the ordinance treats these people unfairly.

Thus, attitudes towards farmland preservation are somewhat mixed in Carver County, although most farmers favor it. With respect to the Metropolitan Council's growth management policies and programs, the persons interviewed generally agreed that they are supportive of the county's farmland preservation efforts, but that since the county has already taken strong measures to protect farmland, the incremental effect of the regional programs is minimal. In fact, the quarter-quarter zoning regulations adopted by Carver County are those which the Council is recommending that other counties and townships adopt.

Nevertheless, according to some farmers and planners, the regional growth policy has had some effect on the pattern of development in the county. For example, the Council may have deterred growth from certain small towns by funneling federal section 201 sewage construction grants only to the two towns designated as freestanding growth centers. A realtor indicated



that development has been channeled to some extent into the urban service area due to the availability of sewers there, but he also noted that the total amount of developable land has not been so restricted that land prices have risen artificially. Apparently, there is some feeling that the urban service boundary was drawn with insufficient local input. This problem may be rectified when the Council reconsiders the boundary line in light of the new or updated local comprehensive plans.

One general complaint about the Metropolitan Council which was voiced by several of the respondents is that no member of the Council is from Carver County. This situation arises out of the fact that Council members are appointed from districts of equal population size, and Carver County's population is very small in relation to the region as a whole. As a result, there is some distrust of the Council in general. However, the planners and farmers interviewed do agree with the Council's land use policies, especially insofar as they reflect a concern for the preservation of agriculture. Furthermore, they did indicate that the Council's public investment and land use policies strengthen the county's zoning ordinance and create an even greater sense that farming will continue to be the cornerstone of Carver County's economy.

#### B. Dakota County

Dakota County contains approximately 277,000 acres of agricultural land, more than any other county in the Metropolitan Area. Seventy-five percent of the County's land is in farms (See Table 14-1). Table 14-8 shows statistics on crop acreage, numbers of livestock, and farm income for the County. Cash income received by farmers is about evenly split between crops and livestock. Corn and soybeans are the most important crops, and many different types of livestock, notably beef cattle, hogs, and chickens, are raised. The average sales price of farmland in 1977 was \$1,478, or 172 percent of the statewide average.

In 1970-78 population growth in the County's urban and rural service areas is shown in Table 14-9. Countywide, the population increased by 38 percent during this period, from 139,808 to 192,870. The 1978 population density was 336 persons per square mile--over three times more dense than Carver County. The Urban Service Area accounted for the vast majority of the growth, while only 7 percent of the total increase occurred in the Rural Area. While these data would seem to indicate that efforts to channel develop-

Table 14-8

## DAKOTA COUNTY FARMING STATISTICS--1978

Acres of Cropland Planted

Corn	101,000
Soybeans	48,500
Wheat	8,800
Oats	19,100
Barley	500
Sunflowers	800
Hay	23,000
Alfalfa	<u>18,500</u>
Total	220,200*

Number of Livestock

Cattle and calves	43,000
Milk cows	9,800
Sheep and lambs	5,900
Hogs and pigs	47,400
Chickens	<u>100,000</u>
Total	206,100

Gross Cash Income in 1977 (thousand dollars)

Crops	26,992
Livestock	25,840
Government Payments	<u>760</u>
Total	53,592

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\* The total land area of the County is 367,774 acres.

Source: Minnesota Agricultural Statistics--1979,  
Minnesota Crop and Livestock Reporting  
Service.

Table 14-9

POPULATION GROWTH 1970-78 IN DAKOTA COUNTY BY  
DEVELOPMENT FRAMEWORK POLICY AREAS

	<u>Number of New Residents</u>	<u>Percent Increase in Number of Residents</u>	<u>Average Number of New Residents Per Sq. Mi.*</u>	<u>Percent Share of Total Increase in the County</u>
Urban Service Area	39,152	38		74
			291**	
Freestanding Growth Centers	10,297	38		19
Rural Service Area	<u>3,613</u>	<u>34</u>	11	<u>7</u>
County Total	53,062	38	106	100

\* Of farmland and undeveloped land as of 1970.

\*\* Urban Service area and Freestanding Growth Center Combined

Source: Twin Cities Metropolitan Council.

ment away from farming areas have been rather successful, it should be noted that large portions of Dakota County were designated as areas of planned urbanization or freestanding growth centers in the Development Framework (See Figure 14-2). This generous allocation of land to the Urban Service Area occurred because extensive leapfrog development had already taken place in the County by 1975, leaving large areas for "infilling" purposes (see Section IIIA for description of MUSA designation criteria). Table 14-10 shows the amount of farmland and undeveloped land situated in the urban and rural service areas. It can be seen that a relatively large proportion of the County's rural land (43 percent in 1977) is actually located in the Urban Service Area, and this land has been developed at a fairly rapid rate (over 18 percent was converted to urban uses from 1970 to 1977). Nevertheless, the decline in farmland in the rural service area was relatively small, and it is this land which is considered by the Metropolitan Council to be long-term agricultural land.

The structure of local government in Dakota County is different from that of Carver County or the other counties in the state. In 1976, special legislation was passed by the



Table 14-10

## FARMLAND AND UNDEVELOPED ACREAGE IN DAKOTA COUNTY, 1970-1977, BY METROPOLITAN POLICY AREAS

	Total Acres <u>1970</u>	Total Acres <u>1977</u>	Acreage Change <u>1970-1977</u>	Percent Change <u>1970-1977</u>
Urban Service Area (including Free- standing Growth Centers).	108,854	88,678	-20,104	-18.5
Rural Service Area	<u>210,279</u>	<u>204,519</u>	<u>-5,753</u>	<u>-2.7</u>
County Total	319,133	293,197	-25,936	-8.1

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Source: Dakota County Planning Department.

state which gave Dakota County townships certain urban powers, including exclusive planning and zoning powers. The County's function is to provide technical assistance and advice to the townships, but each township adopts its own zoning ordinance without the necessity of complying with any minimum standards promulgated at the County level. During the 1970's, several townships adopted "quarter-quarter" agricultural zoning, and all but two have now identified agricultural land as a long-term use in their recently prepared or updated comprehensive plans, and will soon adopt quarter-quarter.

Thus, while acceptance of the idea of agricultural preservation was not synchronous throughout the county, most townships have now taken positive steps toward restricting the conversion of farmland. According to representatives of the farming community, most farmers in the Rural Service Area are committed to long-term agriculture, although prior to 1973 a sense of impermanence was widespread. The change in attitude which took place in the mid-1970's has been attributed to a variety of factors, including a stronger farm products market, rising gasoline prices, a decline in the rate of population growth in the County and the region, and the evolution of the regional growth management policy (see discussion in Section III-C). The current commitment to farming is reflected in the large amount of capital investment which has been made by farmers in recent years. For example, in 1973

only 3-4,000 acres of land in the county were irrigated; the figure is close to 40,000 acres now.<sup>11</sup> Several dairy operations have also been upgraded recently.

Of course, not all farmers in the county view agriculture as a permanent use of the land. Certainly those within or perhaps near the Urban Service Area do not expect to continue farming indefinitely, and older farmers tend to be less committed than younger ones. Another factor which influences the farmers' willingness to stay is their ability to cope with the problems of living near non-farm residents. Some residents complain about the use of noisy and slow-moving machinery, dust, cattle getting loose, the spraying of pesticides and other farm-related "nuisances." In addition, there has been some problem with the departure of farm-related industry, especially equipment dealers and slaughterhouses. The persons interviewed, however, felt that the decline of farm infrastructure was not a major factor in causing farmers to sell their land.

In spite of these problems, the farmers in the rural townships generally intend to continue farming, and have accepted and supported the concept of exclusive farm use zoning and other government programs aimed at restricting the incursion of residential development into the agricultural area. In this county, the Metropolitan Council's influence in promoting agricultural preservation is more evident than in Carver County. At the time that the Development Framework was adopted, local officials in Dakota County were strongly opposed to the Metropolitan Council, which they perceived was becoming a "regional dictator." A state senator whose district included rural Dakota County, led the floor fight against the Land Planning Bill in 1975, and managed to delay its passage for a year (see discussion in Section III B 4). According to the persons interviewed in the county, there is still some latent animosity toward the regional government, although it has become accepted as a permanent fact of life.

According to the representatives of the farming community, the attitude of farmers toward the Metropolitan Council and its policies and programs has become markedly more positive in recent years, mainly because the Council has become more responsive to the problems of farmers and committed to the preservation of farmland. As discussed in Section III, the Council's recognition of the importance of agriculture came about rather belatedly in the Development Framework planning process. The Dakota County agricultural agent noted that in 1976, representatives of the Council, including the chairman, John Boland, began to talk about agriculture as a "highest



and best" use for land in rural areas instead of "vacant" or "leftover" land. This reversal in attitude came about as a result of the work of the Technical Advisory Committee on Agriculture and meetings with local representatives of farming areas. The Council's continuing receptiveness to the ideas and opinions of the rural community, as evidenced by the establishment of the Rural Area Task Force and the development of the Agricultural Preserves Bill, has engendered support among many of the farmers and local officials in the county.

Apparently even many realtors and developers in the county do not feel too threatened by the regional growth policy, since a large amount of undeveloped land has been included within the urban service boundary. The supply of developable land is therefore more than ample to accommodate projected growth through 1990, and land prices have not risen as a result of any imbalance of supply and demand. It should also be noted that some realtors have been actively involved in regional policy development. In fact, the Chairman of the Rural Area Task Force is Secretary of the Minnesota Association of Realtors.

The impact to date of the Council's programs and policies on agriculture in Dakota County can be summarized briefly. The effect of the sewer policy is probably limited, since, as has already been pointed out, generous amounts of developable land have been included within MUSA, and it is unlikely that high-density development would have occurred in the rural area anyway. The Land Planning Act, in conjunction with the Agricultural Preserves Act, is the key to preventing excessive low-density development from interfering with farming operations and using up valuable farmland. The persons interviewed felt that the Land Planning Act was very important because it has caused townships, many for the first time, to take an active interest in planning, zoning, and the protection of agriculture. The County Planning Department has provided assistance to the local governments in preparing their comprehensive plans and has actively encouraged the adoption of quarter-quarter zoning in long-term agricultural areas. As of this writing, all but two townships have accepted this zoning regulation. The reasons cited for the willingness of local officials to adopt farm use zoning include an awareness of rising fiscal costs associated with development, declining rates of growth both locally and regionwide, and a concern about conflicts between farmers and non-farm residents. But perhaps the most important factor was the passage of the Agricultural Preserves Act, which makes farm use zoning a pre-



condition to participation in the preserves program. According to a Dakota County planner, the support of farmers for agricultural zoning in some parts of the county was contingent upon passage of the Act.

Thus, it is apparent that, in absence of a strong county government such as that in Carver County, the Metropolitan Council's activities have played a major role in the establishment of agricultural preservation programs at the local level. The effectiveness of the zoning ordinances, of course, depends in part on the willingness and ability of local governments to administer and enforce the regulations effectively. But it is generally agreed by all parties involved that land use regulation is a function that belongs at the county or local level rather than the regional level. The role of the regional government, however, should not be underestimated. The Council's policies and programs clearly lend support to local efforts to preserve farmland, and where the local initiative to adopt programs has been absent, the Council, by getting state legislation passed, has succeeded in stimulating interest and providing incentives to take action. It is also important to note that much of the Council's success in promoting its policies stems from the fact that the policies actually derive from the rural community itself. This mutual interaction and communication between local and regional interests has overcome some of the inherent distrust of regional government and has encouraged a spirit of cooperation. Perhaps the most important outcome of this communication has been the growing realization that many diverse groups can all benefit from an efficient and orderly regional growth strategy which includes the preservation of agricultural land in outlying areas. Through the combined efforts of the various levels of government, these multiple objectives may be achieved.

FOOTNOTES

1. Rural Area Task Force Report to the Metropolitan Council, 1979. (St. Paul, Minnesota: Metropolitan Council of the Twin Cities Area, February 1979).
2. "The Politics and Planning of A Metropolitan Growth Policy for the Twin Cities--An Executive Summary," (Metropolitan Council, 1976).
3. Knudson, Ed., Regional Politics in the Twin Cities, A Report on the Politics and Planning of Urban Growth Policy. (Metropolitan Council, September 1976).
4. "Metropolitan Issues Report," (prepared for a briefing of the Senate Governmental Operations Committee, House Local and Urban Affairs Committee, Twin Cities Legislators (Metropolitan Council, September 1979).
5. Most of the information and viewpoints presented in this section have been distilled from Knudson (see footnote 3) and Peggy Reichert, Growth Management in the Twin Cities Metropolitan Area: The Development Framework Planning Process, (Metropolitan Council, 1976).
6. "Quarter/quarter" means one quarter of one quarter of any section in the rectangular land survey system.
7. The land use requirements of the Act are found in Section 17, which reads as follows:

Land within an agricultural preserve shall be maintained for agricultural production. The average maximum density of residential structures within an agricultural preserve shall not exceed one unit per 40 acres. The location of any new structure shall conform to locally applicable zoning regulations. Commercial and industrial uses shall not be permitted except that small on-farm commercial or industrial operations normally associated with and important to farming in the area may be permitted by the authority. The authority shall be responsible for enforcing this section.

When a separate parcel is created for a residential structure permitted under subdivision 1, the parcel shall cease to be an agricultural preserve unless the eligibility requirements of section 3 are met. However, the residential unit shall continue to be included in the maximum residential density for the original preserve.

FOOTNOTES

8. The differential assessment offered by the previously enacted Minnesota "Green Acres" law is still available in areas outside the designated preserves.
9. Minnesota Agricultural Statistics - 1978.
10. Rodney Christianson and Philip Raup, "The Minnesota Rural Real Estate Market," Minnesota Agricultural Economist, January 1978.
11. Warren Sifferath, County Agricultural Extension Agent, March 12, 1980.



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## VI. STATE PROGRAMS





Case Study No. 15

STATE AND LOCAL EFFORTS TO PROTECT AGRICULTURAL LAND  
IN MARYLAND

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STATE AND LOCAL EFFORTS TO PROTECT AGRICULTURAL LAND  
IN MARYLAND

by

Kathleen L. Wallace

I. INTRODUCTION

In spite of the fact that the entire state of Maryland falls within what Jean Gottman<sup>1</sup> has termed America's "Megalopolis," agriculture continues to play an important role in the state's economy. The average real estate value per farm in Maryland has more than doubled since 1972 (from \$121,000 to \$263,000 in 1978), and has been consistently higher than the national average (\$195,800 in 1978).<sup>2</sup> In 1978 the market value of all agricultural products sold was over \$827 million, a 32 percent increase since 1974.<sup>3</sup> (During the same time period, the national index of prices received by farmers for all products increased by only 9 percent.) The most important products in terms of cash receipts were broilers and dairy products, with field crops such as corn, soybeans, and wheat a close second. A special study in 1970 indicated that total contributions to income flow from the agriculture industry<sup>4</sup> were \$2.3 billion in 1967-68 (14.2 percent of the Gross State Product), and were forecast to exceed \$3.2 billion by 1976.<sup>5</sup> The food processing business alone employed 8 percent of the state's manufacturing work force in 1969.<sup>6</sup>

Demographic trends both outside of and within Maryland generated the demand for agricultural products and related services which contributed to establishing a major role for agriculture in the state's economy. Although the national rate of population growth is slowly declining, the absolute size of the population is inexorably rising. Between 1960 and 1978, over one million people were added to Maryland's population, which is now estimated to be approximately 4.1 million. Overall population density in the state was 419 per square mile in 1978, a 35 percent increase since 1960.<sup>7</sup>

While population increases have contributed to the increase in the value of agricultural products and resources by augmenting demand for those goods, such increases have also had a major impact on the land use characteristics of Maryland



agriculture. Population growth is not distributed uniformly by geographic area throughout Maryland, and the resultant growth imbalance is creating extreme land use pressures in certain regions. Suburban Washington and metropolitan Baltimore have recently experienced extremely rapid rates of population increase, whereas more moderate growth has occurred in southern Maryland and the Frederick region, and a still slower rate is found in western Maryland and the Eastern Shore counties.<sup>8</sup> This configuration may soon be altered, however, for recent studies have documented that the highest population/growth rates throughout the U.S. are occurring not in metropolitan or suburban areas, but in nonmetropolitan, rural regions.<sup>9</sup> Such a trend would have enormous ramifications for the future viability of American agriculture and rural life.

In Maryland, expansion of metropolitan and suburban areas has already caused dramatic changes in the agricultural landscape. Between 1945 and 1974, approximately 55,000 acres of farmland were removed annually from agricultural production. The percentage of the state's land area which was devoted to agricultural use thus fell from 67 percent (4.2 million acres) in 1945 to 41 percent (2.6 million acres) in 1974.<sup>10</sup> Although not all of the land removed from agriculture is fully committed to non-agricultural uses, the percentage of the state's land area which is essentially irreversibly converted is large and increasing. By 1970, a total of 1.0 million acres (16 percent of Maryland's 6.3 million acres) was committed to non-agricultural use, and that figure was expected to reach 1.7 million acres (27 percent of land area) by the year 2000 if 1970 development trends continued.<sup>11</sup> The picture was even bleaker in certain regions of the state: year 2000 projections of percent of land area committed to non-agricultural uses for the metropolitan Baltimore and suburban Washington areas were 45 percent and 50 percent respectively.

In summary, the future of agriculture in Maryland is unclear. Although the size and output of the agricultural industry as a whole is increasing, the land resource upon which that industry depends is gradually shrinking. As more and more farmland is converted to residential and other urban-related uses, the value of all real estate rises. Expectations for development-sized land sale profits thus grow in the minds of many farmers. With farmland priced for development, only the most established or affluent farmers can afford to expand, young farmers find it difficult to buy land and are hence forced to rent in an unstable market, and the size of Maryland's agricultural resource base continues to shrink. The negative economic, social, and environmental ramifications of such a

situation are potentially significant, a fact which was recognized at an early date by the Maryland General Assembly and which has subsequently been the focus of legislative action and widespread public debate throughout the state.

II. THE AGRICULTURAL LAND ISSUE - HISTORY OF ACTION

In recognition of the economic and environmental value of the state's agricultural lands, the General Assembly of Maryland has acted with varying degrees of success to support local farmers and counteract the trend toward a decline in the spatial extent of Maryland's farms. In 1956, Maryland became the first state to enact a differential assessment law for farmland which reduced the tax burden on local farmers by lowering the property tax assessment for agricultural land. The statute was held unconstitutional in 1960, but the legislature quickly ratified a constitutional amendment permitting current use assessment of agricultural land and a revised differential assessment law was passed that same year. Enactment of this law did not, however, stop the overall decline in farm acreage, and 716,000 acres (11 percent of the state's area) were removed from agriculture between 1954 and 1964.<sup>12</sup> The Governor's Commission on Agricultural Land Preservation was subsequently appointed in 1967 (in response to House Joint Resolution 20) to study and develop a long-term plan for farmland preservation and to reconsider the existing differential assessment law. Although the Commission failed to produce the long-range plan requested of them, many of their recommended changes in the differential assessment law were incorporated into the 1969 amendments to the Farmland Assessment Law. One of the most important changes was imposition of rollback taxes on land which was converted to an ineligible use.

Interest in agricultural land issues remained high, and the 1972 and 1973 sessions of the Maryland General Assembly produced several bills dealing with a variety of land use issues. Senate Bill 254 (1972) introduced the concept of transferable development rights as a means of preserving agricultural land and preventing suburban sprawl. (This bill later served as the basis for the New Jersey Blueprint Commission Plan.<sup>13</sup>) House Bill 341 and Senate Bill 362 (1973) called for the creation of a state land use agency with the power to designate, upon consultation with local governments, areas of critical state concern. Local governments were to adopt regulations restricting development in those areas, with failure to do so leading to state-imposed regulations. The Senate Bill specifically included prime agricultural land within its definition of 'areas of critical state concern.' Another attempt to establish more stringent land use controls was incorporated into Senate Bill 728 (1973), which called upon the Department of State Planning to develop minimum land use guidelines and mandated that these be used by local governments in adopting and implementing land use plans. All of these bills received



widespread attention from the farm community and local governments throughout the state, generated heated controversy, and consequently were not enacted. Farmers objected to the mandatory nature of the various controls, fearing loss of equity in their land because of the restrictions on development. In an effort to represent this viewpoint, the Maryland Farm Bureau encouraged the filibuster which ultimately led to the defeat of the state land use agency bill and actively lobbied against the other bills. Officials of local governments in Maryland also expressed strong opposition to such legislation in an effort to stave off increased state control over land use decisions which they felt should be made locally.

Since legislation mandating stringent land use controls had been uniformly dismissed as unacceptable by the General Assembly, proponents of agricultural land preservation in the State Senate stepped back a step and decided to try a new tack. Senator James (who is still one of the prime movers behind agricultural land protection in the State government) and Senator Boyer introduced and the legislature enacted Senate Joint Resolution No. 43 in March of 1973. This resolution directed the Secretary of Agriculture "to undertake a comprehensive study of the ways and means to preserve agricultural land in Maryland and prepare a long range plan and any recommendations deemed appropriate for such preservation ..." The resolution documented the need for such a study with statistics on the loss of farmland within the state, statements about the importance of agriculture to the state's "economic and environmental stability and growth," and examples of actions undertaken by other states to address the issue of loss of agricultural land.

Several months after approval of Senate Joint Resolution 43, the Secretary of Agriculture appointed a Committee on the Preservation of Agricultural Land to carry out its mandate. The 18 members covered a broad spectrum of interests, including citizens and farmers as well as representatives of the following bodies: Maryland State Senate, House of Representatives, Office of the Governor; and State Departments of Natural Resources, Assessments and Taxation, Agriculture, State Planning, and Economic and Community Development; University of Maryland; and the United States Department of Agriculture. Consultants were drawn from many of the same departments, but also included representatives from the Maryland Farm Bureau and the Soil Conservation Service of the U.S.D.A. Following formulation of a preliminary work plan, several subcommittees were formed to carry out research into seven general areas of concern: rationale for protecting agricultural land in Mary-

land; current situation and trends in agricultural land use; future non-agricultural demands on land; how much agricultural land should be protected; past and present efforts to protect agricultural land in Maryland; past and present efforts to protect agricultural land in other states and countries; and changes in estate tax laws as a means of preserving agricultural land. When the subcommittee reports were complete, the entire Committee reviewed the work and considered a wide range of alternative techniques for preservation of agricultural land. Out of those techniques six were chosen as most applicable to the situation in Maryland and therefore worthy of more detailed consideration. The six included: (1) Do nothing except continue with the existing Farmland Assessment Law; (2) Provide for voluntary establishment of agricultural districts; (3) Provide for voluntary agricultural districts with state purchase of easements; (4) Provide for voluntary agricultural districts with annual contracts for renewal; (5) Require local governments to designate agricultural districts, with the potential for state purchase of easements or annual contracts; (6) Permit local governments to adopt systems of transferable development rights (TDRs). Shortly after beginning discussion of the six alternatives, Alternative 1 was eliminated from consideration because the Committee felt that the Farmland Assessment Law alone was "insufficient to preserve Maryland farm land in amounts required for future food and open space ... needs of our people." Alternative 6 was also eliminated because the concept of TDRs is complex and difficult to understand, although the Committee did state that it might be "worthy of trial on a pilot basis." While the Committee itself was debating the alternatives, they held six regional hearings in the different geographic regions of the state to determine public sentiment on the issue and methods of agricultural land preservation.

County Extension Agents assisted in arranging the meetings and in the distribution of letters of invitation from the Secretary of Agriculture to selected farm leaders in each of the 23 counties. A total of 440 people attended the hearings, 205 of whom filled out and returned opinion poll forms which were distributed at the meetings. Of those responding, 92 percent favored continuation of the Farmland Assessment Law, and 91 percent felt that additional methods should be developed to preserve agricultural land. When presented with five of the six alternatives derived by the Committee (Alternative 4, districts with annual contracts, was not included since it was developed at a later date), there was a strong preference for Voluntary Agricultural Districts (37.1 percent) and for Voluntary Districts plus State Easement Purchase (34.6 percent). Only 7 percent of the respondents indicated Designated Agricul-



tural Districts as their first preference.

While the Committee on the Preservation of Agricultural Land was formulating its recommendations and drafting its final report in 1974, Senate Bill 715 was enacted. This bill created the Maryland Agricultural Land Preservation Foundation 'for the purpose of acquiring easements on farm and woodland by purchase or gift' (Md. Agric. Code Ann., Sec. 2-501 to 2-508). The Foundation could only accept easements in perpetuity, and was under no mandate to consult with local government prior to acquisition to insure compatibility of the program with local plans. No funding was allocated for the program, and during the three years in which the statute was in effect only one easement (on a 58-acre farm) was donated to the Foundation. Nonetheless, the program was important as a legislative acknowledgement of the concept of separability of rights in land.

In August of 1974 the Committee on the Preservation of Agricultural Land transmitted its Final Report to the Secretary of Agriculture. The Committee's major recommendations were as follows:

1. Continue the Maryland Farmland Assessment Law in its present form.
2. Modify federal and state estate tax laws to allow use valuation of farmland.
3. Prepare and introduce state legislation allowing for the voluntary formation of agricultural districts and purchase of easements by the State. Districts were to include a minimum of 500 acres, and would be set up for 20 years, after which termination could occur if such an action was in the public interest. Funds for state purchase of development rights could be obtained by an increase of  $\frac{1}{2}$  to 1 percent in the real estate transfer tax.
4. Establish a goal as to the amount of agricultural acreage which should be preserved in Maryland. The Committee suggested a range of 1.5 to 2.0 million acres.
5. Request all planning and zoning bodies in the state to recognize the importance of proper planning for non-agricultural development as a viable technique for preserving agricultural land.



The first attempt by the General Assembly to act on the recommendations of the committee was unsuccessful. House Bill 18 (1975) incorporated some of the Committee suggestions, providing for voluntary formation of agricultural districts of at least 500 acres in which development was to be restricted. However, apparently the possibility existed that a landowner could be petitioned into a district against his will if enough of his neighbors were interested in forming a district.<sup>14</sup> A Farm Bureau official active in state legislative action at that time noted that the problem with the bill was in its drafting: the Committee involved was thorough in its research and conclusions, but the person who drafted the final bill had not been involved in committee discussions and knew nothing of the subtleties of the issue. Consequently, when the bill was presented back to the committee it was subjected to over 100 amendments and ultimately received an unfavorable report. The bill was never enacted.

During the 1975 interim a joint committee of the House Ways and Means Committee and the Environmental Matters Committee drafted House Bill 783, which was introduced in the 1976 session. This bill abandoned the concept of mandatory agricultural districts in favor of voluntary districts, provided for state purchase of development rights with payment to extend over ten years, and proposed the use of some Program Open Space funding to purchase the easements. Local governments strongly objected to the particular funding mechanism proposed, for they relied upon Program Open Space funds in their local programs for the purchase of parks and recreational areas. Questions were also raised as to the goals and ultimate costs of such an agricultural preservation program, and the bill was not enacted.

In 1977, a draft agricultural land preservation bill was tied up in the Policy Committee of the Maryland State Senate. Consequently, Senator James Clark, President of the Maryland Senate and a long-time proponent of agricultural land preservation, got the bill transferred to the Finance Committee of which he was chairman. Working closely with the Maryland Farm Bureau, the Finance Committee revised the bill substantially.<sup>15</sup>

District formation and sale of easements were to be completely voluntary; both, however, were subject to approval by the local government. The new bill also addressed concerns about the potentially enormous cost of state easement purchase by requiring farmers to submit a firm asking price with an easement sale application. The state would not be required to pay the full difference between fair market and agricultural use value ('easement value') and decisions as to which ease-

ments to purchase would be made based on a specific formula comparing asking price to easement value, with highest priority going to the lowest bidder. This system not only had the potential for lowering the cost to the state of easement purchase, but it also settled the politically significant question of who should get money first. The financing issue was very important in legislators' assessments of the bill. Some additional support was insured by the provision that the legislature would never be committed to more funds than they had annually allocated to the program of the Maryland Agricultural Land Preservation Fund. The bill was passed in the spring of 1977, and the Maryland Agricultural Land Preservation Foundation Act went into effect that July.

III. THE MARYLAND AGRICULTURAL LAND PRESERVATION FOUNDATION PROGRAM

A. Program Description

The Maryland Agricultural Land Preservation Foundation Act gave to the Foundation (which had existed within the State Department of Agriculture since 1974) broad new responsibilities for preserving productive agricultural land within the state. The new act empowered the Foundation to adopt rules and regulations necessary to carry out its task, and identified potential sources of funding for the program. The Foundation's first executive director was hired in March of 1978, final action on regulations for the program was taken in January of 1979, and the program described below has been in operation since that time.

The Maryland Agricultural Land Preservation program is voluntary on the part of landowners, and depends heavily on cooperation from local governments to attain its goals. Each Maryland county must appoint a five-member Agricultural Preservation Advisory Board (APAB), which is to advise the county governing body on the formation of agricultural districts and the approval of easement purchases and to formulate local priorities for agricultural land preservation. At least three members of the APAB must be owner-operators of commercial farms who derive over 50 percent of their income from farming. An additional requirement for county participation in the state program is adoption of a county ordinance which allows the following within an agricultural district: (1) any farm use of land; (2) operation at any time of machinery used in farm production or the primary processing of agricultural products; and (3) normal agricultural operations, including the sale of farm products produced on the farm where the sale is made. County governments are also encouraged to minimize regulatory requirements for non-residential farm structures and related agricultural improvements.

Landowners interested in forming an agricultural district must meet certain eligibility requirements. The Foundation's regulations require that the size of a district normally be not less than 100 contiguous acres,<sup>16</sup> although smaller ones will be considered if they are characterized by special capabilities or productive capacity. (There are no minimum size requirements for addition of land parcels which are contiguous to an existing district.) Land in a district must either be used primarily for the production of food or fiber or be of such open space character and productive capability that agri-



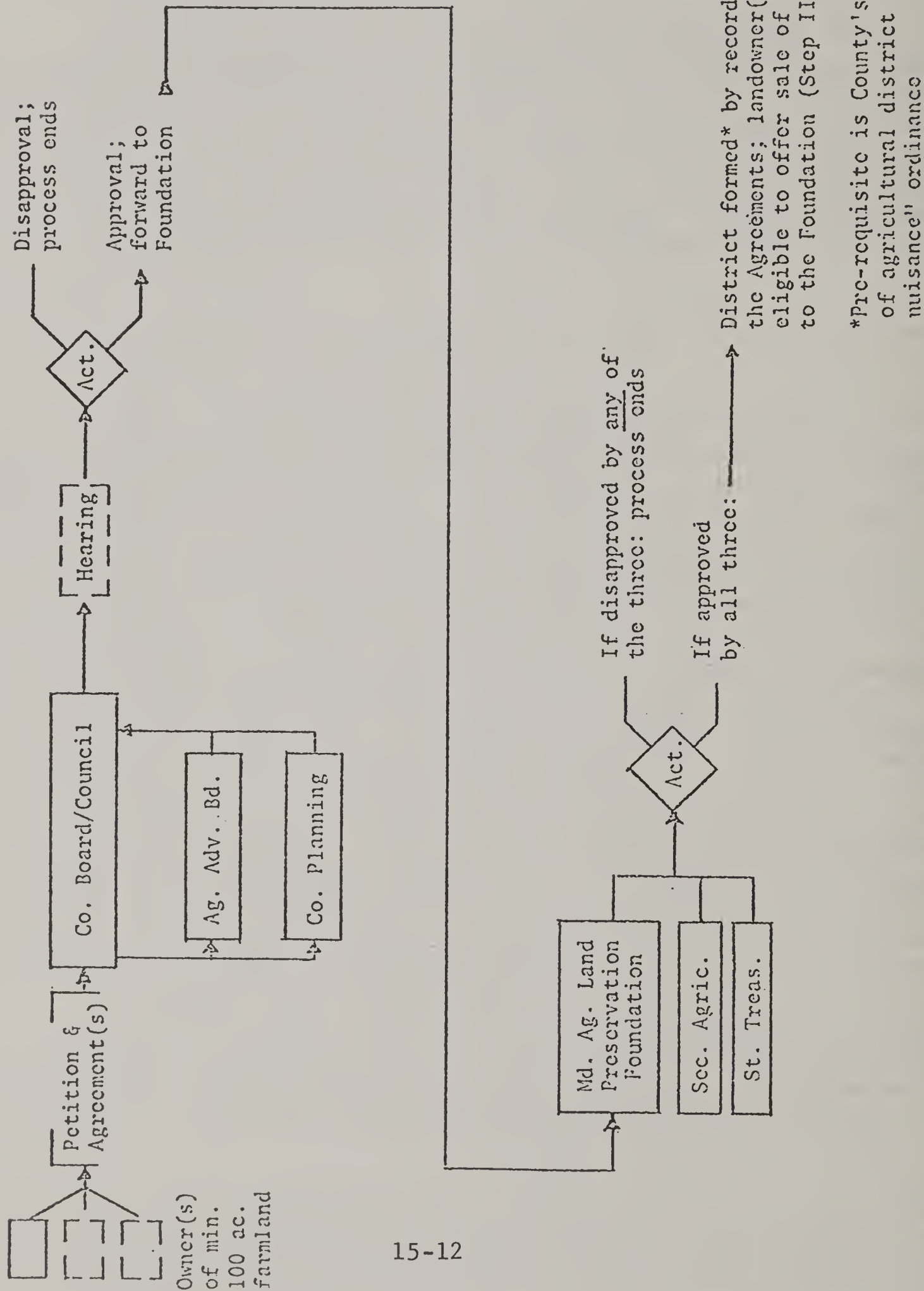
cultural production is feasible. The majority of the land area must be of S.C.S. Soil Capability Classes I, II, and III or Woodland Groups 1 and 2. Again, an exception to this requirement will be made if the area has special capabilities or is an area of existing, extensive, specialized production. Finally, land within the boundaries of a ten-year water and sewer service district may be included in an agricultural district only if the land is outstanding in productivity and is of significant size. (Ten-year water and sewer plans are required of all local governments in Maryland pursuant to Md. Code Ann., Art. 43, Sec. 387 C. 1978. These plans indicate the general direction of county growth by outlining areas to be serviced by public water and sewer within the next ten years.)

The procedure for forming an agricultural district is shown in Figure 15-1. One or more landowners of qualified farmland may file a petition with the local governing body requesting creation of an agricultural district from their qualified land. The petition must include a detailed map of the land in question, a description of the parcel's size and current use, and a signed district agreement for each subject parcel. The county governing body will then refer the petition to the local APAB and county planning and zoning body, who each have 60 days for review and recommendations. The APAB must insure that the land meets all criteria established by the Foundation, while the planning and zoning board must insure the compatibility of district establishment with state and local policies, plans, and programs. If neither board recommends approval, the county governing body must deny the petition. If either of the two reviewing agencies recommends approval, the county governing body shall hold a public hearing. Adequate notice must be given to all landowners within and adjacent to the proposed district, an important requirement since such notice has in several cases led to enlargement of the district by interested neighbors. The decision of the local governing body must be rendered within 120 days of receipt of the petition, after which recommendations for approval or denial must be submitted to the Foundation. The Foundation may approve district establishment only if such approval has been recommended by the county governing body and by a majority of the Foundation Board of Trustees, by the Secretary of Agriculture, and by the State Treasurer.

Upon approval by the Foundation of a petition, an agricultural preservation district shall be established by the county governing body as soon as the Foundation has recorded the signed district agreements in the land records of the

Figure 15-1

THE PROCEDURE FOR FORMING AGRICULTURAL DISTRICTS IN MARYLAND



county. Landowners within an agricultural district are protected by county ordinance from potential nuisance suits,<sup>17</sup> and are also given the opportunity to make an application to sell a development rights easement to the Foundation.

In return for these benefits, landowners agree not to subdivide or develop their land for residential, commercial, or industrial purposes. The original owner may, however, convey one acre or less to each of his children who may each build one dwelling. If this provision would allow house lots smaller than those allowed by existing county zoning, the local zoning would normally govern. However, in order to encourage landowners to join districts, Baltimore County allows the creation of lots for children as provided for in the districting statute even though they may be smaller than the lots allowed by the zoning ordinance.<sup>18</sup> Housing for tenants "fully engaged in operation of the farm" may also be built at a density not to exceed one tenant house per 100 acres.

District formation must be for a minimum of five years, and shall continue in effect indefinitely unless terminated at landowner, county governing body, or Foundation request. Within the initial five-year period, a landowner may request release from a district on the basis of severe economic hardship. After the fourth year, a land owner may terminate his property's inclusion in a district by giving the Foundation a one-year notice. The only penalty for breaking the five-year contact would appear to be loss of eligibility for the easement purchase program. At any time after district formation, the local government or the Foundation may alter or abolish a district if the agricultural use of land has changed so that it no longer meets Foundation criteria and if such an act is approved by the county governing body (after review by the APAB, the county planning and zoning board, and the public at a public hearing), the Foundation, the Secretary of Agriculture, and the State Treasurer.

The characteristics of Maryland districts are compared with those of New York and Virginia in Table 15-1. The Maryland Agricultural Land Preservation Fund is financed by general or special fund appropriations and by grants or transfers from governmental or private sources. Half of the money available to the fund in each fiscal year is to be allotted equally to all 23 counties for general easement purchases, with no matching county funds required. The other half of the fund is allotted to those counties having an approved program for matching purchases. (This includes those counties whose programs meet the minimum Foundation standards for district for-



Table 15-1

## AGRICULTURAL DISTRICTS:

## A Comparison of Legislation in New York, Virginia, and Maryland

	New York	Virginia	Maryland
Legislation	NY Agric. and Markets Law, Art. 25-AA (1971)	Va. Code, Secs. 15.1-1506 to 15.1-1513 (1977)	Md. Agriculture Code Ann, Secs. 2-501 to 2-515 (Supp. 1978)
Initiative for district formation	Landowners-voluntary. State-mandatory if $\geq$ 2000A are considered unique, irreplaceable	Landowners-voluntary	Landowners-voluntary
Review of proposals for district formation	Recommendations: County Planning Board, County Agricultural District Advisory Committee, State Agric. Resources Committee, Secretary of State, public Decisions: County legislature, State Commissioner of Environmental Conservation	Recommendations: County Planning Commission, County Agricultural & Forestal Districts Advisory Committee, public Decisions: County governing body	Recommendations: County Planning and Zoning Board, County Agricultural Preservation Advisory Board, public Decisions: County governing body, Maryland Agricultural Preservation Foundation
Criteria for acceptance of district proposal	Minimum acreage: 500A contiguous Use: predominantly agriculture (non-conflicting other uses permitted to preserve continuity)	Minimum acreage: 500A contiguous or within 1 mile of core land Use: must contain "agriculturally significant land" (non-conflicting other uses permitted to preserve continuity) Sample factors: soils quality, historical use, quality of investments on land, zoning.	Minimum acreage: 100A contiguous (or less if special features exist) Use: only agriculture or open space with agricultural capability Soils: SCS Class I, II, III

	New York	Virginia	Maryland
Benefits within districts	<p>Owners of more than 10A farmland may apply for use value assessment</p> <p>Taking by eminent domain limited</p> <p>Water, sewer, and other special tax assessments limited</p> <p>Use of funds for water, sewer, and other development activities limited</p> <p>Local governments forbidden to enact measures that would unduly hamper agric.</p> <p>None</p>	<p>Automatic qualification of agricultural land for use value assessment (application required, but no local land use assessment ord. necessary)</p> <p>Taking by eminent domain limited</p> <p>Water, sewer, and other special tax assessments limited</p> <p>Use of funds for water, sewer, and other development activities limited</p> <p>Local governments forbidden to enact measures that would unduly hamper agric.</p> <p>None</p>	<p>Landowners may apply to Foundation to donate or sell development rights from their land</p> <p>Local governments forbidden to enact measures that would unduly hamper agric.</p> <p>Owner may not subdivide or develop land for conveyance to parties other than his own children or tenants</p>
Prohibitions on land use within district	None	None	Owner may not subdivide or develop land for conveyance to parties other than his own children or tenants
Review of districts	<p>Every 8 years. Only then may additions to or deletions from a district be made.</p>	<p>Every 4 to 8 years.</p> <p>Additions to a district may be made at any time by separate application. Withdrawals may occur at any time subject to approval by County governing body.</p>	<p>Foundation or County may review districts at any time after formation. Additions may be made at any time by separate application. Withdrawal may only occur after 5 years or any time thereafter with 1 year notice.</p>

mation and who have agreed to contribute 40 percent of the cost of easements acquired under the matching purchases program.) Matching purchases will be funded 60 percent by the state and 40 percent by the county, with a maximum annual state fund contribution of \$1 million to any one county.

In fiscal year 1978 (FY 78), \$2 million was made available to the Agricultural Land Preservation Fund by transfer from the Department of Natural Resources Program Open Space Fund. Applications for easement sale are due by July 31 each year. 1979 funds are being used for first round acquisitions. Applications for approval of Local Matching Programs for 1980 were received from six counties, with local funding commitments totalling \$1.22 million. Only three of those counties submitted applications for easement sale in 1979 (Anne Arundel, Carroll, and Howard); consequently, only funds from those three counties will be used, and a slightly smaller total of \$1.16 million in local matching fund commitments was available for FY 80.

A land owner within an Agricultural District may make application to the Foundation to sell a development rights easement, and must include in the application an asking price for the easement. For such an offer to be considered by the Foundation, the county governing body must approve the application, basing its decision upon an evaluation of the land in light of current local regulations, patterns of development, and priorities for the preservation of agricultural land. The maximum value of any easement to be purchased shall be the asking price or the difference between the fair market and agricultural value of the land (i.e., the theoretical value of the development rights), whichever is lower. The Foundation approves applications for sale of easements on a county-by-county basis, taking into account the allocations available to each county and the proportion obtained by the formula:

$$\frac{\text{theoretical value of easement} - \text{asking price}}{\text{theoretical value of easement}}$$

A landowner whose asking price exactly equals the theoretical easement value would obtain a ratio of zero. Should a landowner be anxious to sell an easement, he may set the asking price lower than the theoretical easement value, thus offering the easement at a discount (with a ratio between zero and 1.0). All applications with a proportion greater than zero are to be ranked in descending order, with the resulting rank being the sole criterion for selecting such offers for purchase. Applications with proportions less than zero will not



be purchased.

The procedure for selling an easement is diagramed in Figure 15-2. All easement sale applications are due by July 31 of the fiscal year in which they are to be considered, and state offers to buy are to be made on or before January 31 of the following calendar year. Funds not expended on a county basis by January 31 are to be used to make additional purchases between April 1 and May 31. These purchases will be made on a statewide basis not requiring matching funds by counties.

Restrictions imposed by an easement include those required by participation in an agricultural district. In addition, dumping of trash and most other materials and the displaying of most signs and billboards are prohibited, while sound agricultural, soil, and water conservation activities must be carried out. State purchase of an easement does not, however, grant the public any right of access or right of use of the property. Furthermore, land which is subject to an easement may be sold, subject to the encumbrances contained in the easement deed.

Easements purchased by the Foundation will be held for as long as profitable farming is feasible, which is the sole criterion for termination decisions. The landowner may request that the easement be reviewed for termination at the end of 25 years. Approval of the county governing body, the Foundation, the State Treasurer, and the Secretary of Agriculture are all required for termination to occur.

B. The Extent to Which the Agricultural Land Preservation Act of 1977 Implemented the Recommendations of the 1974 Final Report of the Committee on the Preservation of Agricultural Land<sup>19</sup>

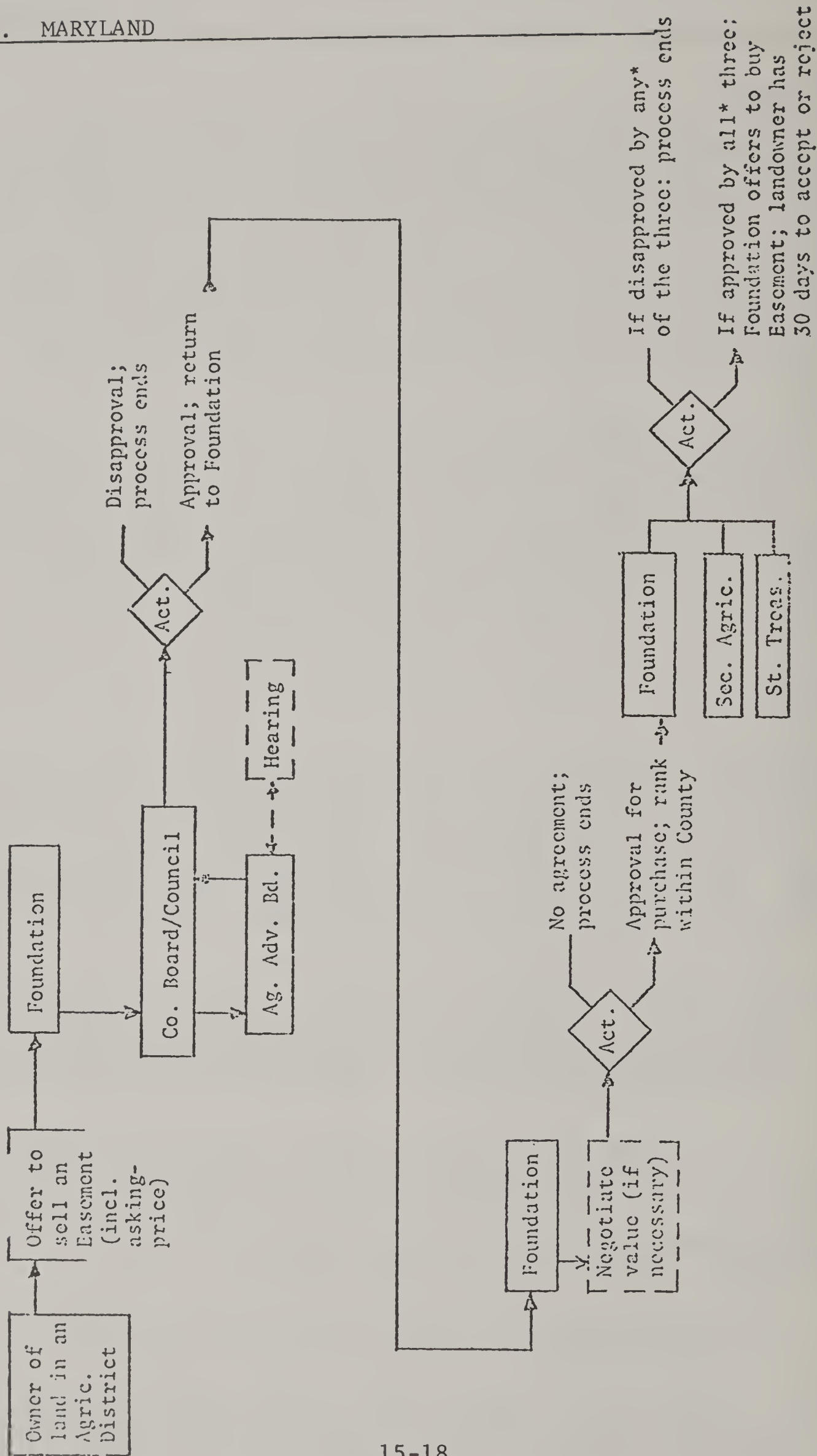
In the 1974 Final Report of the Committee on the Preservation of Agricultural Land, five major recommendations were made with regard to future agricultural land policy in Maryland. The following paragraphs will review those recommendations and assess present state policy in their light.

1. Continue the Farmland Assessment Law in its present form.

With heavy backing from local farmers and the entire Farm Bureau organization, differential assessment continues to be made available to farmers regardless of whether

Figure 15-2

## THE PROCEDURE FOR SELLING AN EASEMENT TO THE MARYLAND AGRICULTURAL LAND FOUNDATION



\*Law specifies "recommendation" by Sec. of Agric. and by State Treasurer

or not they choose to participate in an agricultural district. In 1979, the Maryland Farmland Assessment Law was amended to replace the nominal conveyance tax with a penalty for conversion (development tax penalty) of 10 percent of the difference between the fair market and agricultural use value of the land at the time of conversion. According to a Farm Bureau representative, this tax increase was initiated by that organization, which also lobbied to insure that the development tax revenue was put back into the preservation program. Current law now requires that 2/3 of all revenue generated by the development tax penalty be put into the State Agricultural Land Preservation Fund, with the other 1/3 retained by the local taxing jurisdiction for an approved local agricultural land preservation program.

2. Modify federal and state estate tax laws to permit use-valuation of agricultural land.

Since the Final Report was published, Federal and Maryland estate and inheritance tax laws have been modified to allow in certain instances the valuation of agricultural land on the basis of use rather than fair market value. (I.R.C., Sect. 2032A; Md. Code Ann., Art. 81, Sect. 154, Supp. 1978.)

3. Consider state legislation to allow the formation of agricultural districts and the sale of easements to the state.

The general intent of this recommendation was enacted into law as the Maryland Agricultural Land Preservation Foundation Act (1977). However, the Final Report made specific suggestions with respect to certain characteristics of agricultural districts and easements, some of which underwent significant modification in the Act. For instance, the Final Report suggestion for a 500-acre minimum district size was reduced to 100 contiguous acres, and the length of time a district was to remain in effect was cut in half from ten years to five. A careful reading of the Final Report reveals the possibility that a landowners might be voted into a district against his will; this possibility was eliminated in the Act by requiring all subject landowners to sign the district agreement. In all of these changes the guiding hand of the Farm Bureau can be reasonably detected, for they are strongly in favor of providing both small and large farmers with the opportunity to form an agricultural district voluntarily, but a ten-year commitment has the potential for too sharply limiting a farmer's land use options.



Another major change which occurred between Final Report and final legislation is found in the list of benefits offered land within an agricultural district. Three major provisions of the Final Report were not incorporated into the Act:

- Any use of land for processing, preparation, or sale of products to farm operators for farm use shall be permitted in a district, including seed, fertilizer, feed, machinery, equipment, etc.
- In a district, expenditures of public funds for non-agricultural development shall be prohibited.
- In a district, condemnation proceedings shall be limited to those for which no reasonable alternative exists. Condemnation which does occur must be accompanied by an environmental impact statement.

A Farm Bureau spokesman identified the Association of County Governments as one group which was active in formulation of the legislation. It is very possible that pressure from this group led to the deletion of the three items above, for such mandates could easily be interpreted as undesirable state interference with the planning powers of local governments.

One final modification of a Final Report recommendation is worthy of note. Whereas the Report stated that the price of an easement was to be the difference between fair market and agricultural use value ('easement value'), the law set the maximum price payable to be the lower of the asking price and the easement value. This introduction of a competitive bidding system was included by Senator James Clark, the bill's sponsor, in order to reassure other members of the legislature that the state would be getting the 'best buy' possible on its easement purchases.

4. Establish a goal for the amount of agricultural Land to be preserved in the state.

The Final Report made a tentative suggestion of 1.5 to 2.0 million acres, but no such goal has ever been formally adopted for the Agricultural Land Preservation program. It has been suggested by the executive director of the Agricultural Land Preservation Foundation that establishing a goal for that program alone would be inappropriate and insig-

nificant because of the existence of other state and local programs which could contribute to attainment of such a goal.

5. Request all planning and zoning bodies in Maryland to recognize the importance of proper planning for non-agricultural development as an important technique for preserving agricultural land.

This recommendation has not been instituted as a separate state action, but its intent was incorporated in early 1980 into an executive order by the Governor of Maryland creating a State Development Council. This Council is to conduct a review of state policies, laws, and regulations affecting physical development decisions and economic growth, with the ultimate goal of formulating a comprehensive state development policy. One specific task included in its mandate is a review of state laws and investments in infrastructure as they affect agricultural land. Membership on this cabinet-level Council is to include the Secretaries of Planning, Economic and Community Development, Health and Mental Hygiene, Agriculture, Natural Resources, and Transportation (or their designees), and the Lieutenant Governor. A Task Force composed of local and legislative representatives will review and hold hearings on the Council's recommendations, with a final report including appropriate legislative proposals to be completed by November of 1981.

C. Costs Incurred in the Formulation and Operation of the Maryland Agricultural Land Preservation Program

Start-up costs for the present agricultural land program in Maryland must be traced back to the Committee on the Preservation of Agricultural Land, whose background research and recommendations were vital to the ultimate enactment of the existing program. Both membership on the Committee and consultants to the Committee consisted predominantly of representatives of various state and federal agencies; consequently, most tasks were performed as in-kind services upon which it is impossible to place a dollar value. Similarly, the costs of formulating, introducing, and enacting the Maryland Agricultural Land Preservation Foundation Act were absorbed into the operating costs of the legislature. Appraisal guidelines were also derived in-house, by farmland appraisers from the University of Maryland and from various local governments throughout the state.



The operating budget of the Maryland Agricultural Land Preservation Foundation is small: between \$39,000 and \$49,000 per year. The permanent staff consists of an executive director and a secretary, with certain services provided by other Departments. For example, legal services are provided by the attorney for the Department of Agriculture and accounting services are provided by their business office. The executive director has requested an additional administrative assistant for his staff, but will not receive such a new staff position at least through FY 81 because of a state hiring freeze. This is seen to be a growing problem for program administration, since the Foundation is experiencing rapid increases in the numbers of district petitions, counties participating in the program, and easement sale requests.

The Foundation's executive director identified publicity expenditures as one of the most significant costs in any new program. This is especially true in a program like Maryland's, in which it is critical that information reach small groups and individuals. The Foundation was greatly aided in this task by the local organizational structure of the program, which mandated formation of five-member Agricultural Preservation Advisory Boards (APAB's) in each interested county. Initially, the Foundation asked the local governing body to appoint a staff liaison person from the APAB to meet with small groups in the county and disseminate information. Frequently, this person was a planner, elected official, S.C.S. representative, or county extension agent and was thus exceptionally suited to the task. This liaison position has evolved with the program, and some counties now have two or three such people actively involved.

Additional publicity efforts have included publication of descriptive program material which is available to the public upon request, issuance of periodic press releases, participation by the staff in a radio program, preparation of Agricultural Land Preservation posters with space for local APAB contacts, staff speaking engagements and presentations totaling over 100 in 1979, and Foundation organization of six county-wide public information meetings.

Funding for the state purchase of development rights is still in a state of flux. The first round of purchases (FY 80) were made with a \$2 million transfer from Program Open Space funds (which came out of FY 78 appropriations) and \$1.1 million in local matching fund commitments. The source of these Program Open Space funds is a portion of the state revenue from the real estate transfer tax. For FY 81 purchases, the legislature



appropriated \$3.0 million for the agricultural preservation program from these funds. It is estimated that only \$150,000 from the development tax penalty will be available for FY 81 purchases by the state, a far lower figure than originally projected because of recent dramatic decreases in housing starts and housing transfers.<sup>20</sup> The Foundation's initial \$2 million request from the FY 81 capital budget got lost in the budget formulation process.

If these budget requests are approved and the revenue estimates prove accurate, a total of \$3.15 million will be available in FY 81 for state contributions to the purchase of development rights on agricultural land. This, combined with the \$3.1 million in commitments from local matching funds, is \$3.1 million more than the funding level attained during the program's initial year of operation. The long term commitment of the legislature to this level of funding is unclear, however. Senator Clark, the President of the Senate, was the sponsor of the original program and is still one of its staunchest advocates. He feels certain that the development tax penalty will remain in effect, although revenues generated by that tax are subject to extensive fluctuations according to the state of the national and local economy. Continued use of Program Open Space funds for purchase of development rights is not as certain, for it is opposed by open space constituents who would like to retain control of those funds and by recreation advocates who would like to use that money to develop facilities. In an effort to educate other members of the General Assembly as to the value of the program (and consequently of the need to fund it adequately), Senator Clark sent a letter to every state legislator accompanied by a copy of "Where Have the Farmlands Gone?", a glossy pamphlet published by the National Agricultural Lands Study. Both he and Senator James, the State Treasurer, are 100 percent behind the Maryland Agricultural Land Preservation program. As long as one or both of them retain their influential positions in the state government, it is likely that the program will continue to be funded at the highest level attainable in light of other economic needs of the state.

#### D. Program Effectiveness: Facts and Perceptions

As of March 1980, the Maryland Agricultural Land Preservation program had been funded and fully operational for just over one year. During that time, 60 districts had been established in seven counties (mostly in or near the metropolitan areas of Baltimore and Washington, D.C.), comprising a total of 9,200 acres. Each of Maryland's 23

counties had appointed a local APAB, and 13 had also passed local ordinances providing for the protection of normal agricultural activities in agricultural districts, thus completing the prerequisites for participation in the state program.

By September 24, 1980, the number of districts had increased to 99, consisting of 171 farms and 23,711 acres (Table 15-2). The leading counties were Carroll and Howard, which had significantly more acreage in districts than any other counties in absolute terms, and also relative to total land in farms. Other leading counties were Frederick, Harford, Anne Arundel, and Caroline in total numbers of acres in districts and Anne Arundel, Harford, Calvert, and Caroline in acres per 1000 acres of land in farms. The program had grown rapidly in total acreage and geographical distribution, yet the total area in districts was less than 1 percent of all land in farms in the state in 1978.

The first round of easement sale applications were due on July 31, 1979. Since the final regulations for the program had first been published in January, local governments and farmers interested in participating had only six months in which to appoint a local APAB, pass a county ordinance allowing formation of districts, receive and review applications for district formation, finalize district agreements, and receive and review applications for easement sale. In light of this time constraint, it is quite remarkable that 17 completed easement sale applications were received by that July deadline.<sup>21</sup> Those 17 offered the sale of easements on a total of 2,842 acres located in four counties: Anne Arundel (89.5 acres), Carroll (1,880.6 acres), Harford (107 acres), and Howard (764.9 acres). The average asking price was \$1,100, but the range was very broad--from \$400 to \$5,200 per acre.<sup>22</sup>

The average asking price for the 2,842 acres offered in July 1979 was \$1,000, but the range was very broad--from \$400 to \$5,200 per acre. Average asking price was maintained at \$1,000 in fiscal year 1981 when 11,484 acres on 80 farm properties were offered (Table 15-3) for a total of \$12,376,172. Average per acre asking price as a county average ranged from \$721 in Dorchester County on the Eastern Shore to \$1,893 in Anne Arundel which lies south of Baltimore and contains Annapolis, the state capitol.

Some insight into the relationships between asking price, theoretical value, and offer to buy can be gained from Table 15-4, which is based on data for fiscal year 1980. Offers to

Table 15-2

## PARTICIPATION IN AGRICULTURAL PRESERVATION DISTRICTS, MARYLAND, SEPTEMBER 24, 1980

<u>County</u>	<u>No. of Districts</u>	<u>No. of Farm Properties</u>	<u>Acreage</u>	<u>Acres per District</u>	<u>Acres in districts per 1000 acres in farms*</u>
Alleghany	2	2	243	122	4.7
Anne Arundel	5	22	1,786	357	37.3
Baltimore	5	7	840	168	7.3
Calvert	4	7	853	213	16.3
Caroline	6	9	1,772	295	13.0
Carroll	35	58	7,809	223	43.77
Dorchester	4	5	997	249	7.5
Frederick	13	13	2,175	167	8.6
Garrett	1	1	175	175	1.4
Harford	7	11	1,948	278	16.4
Howard	11	26	3,856	351	56.1
Montgomery	1	1	214	214	1.9
St. Mary's	1	1	340	340	3.3
Washington	4	8	702	176	
Total	99	171	23,711	240	8.6

\*Land in farms from 1978 Census of Agriculture (preliminary).



Table 15-3

## FY '81 EASEMENT SALE APPLICATIONS, MARYLAND

<u>County</u>	<u>No. of Farm Properties</u>	<u>Acres</u>	<u>Average Asking Price Per Acre</u>
Anne Arundel	8	446.81	\$1,893
Baltimore	4	435.14	959
Calvert	4	683.85	1,184
Caroline	3	731.48	1,182
Carroll	31	4,031.12	923
Dorchester	2	602.00	721
Frederick	5	855.00	979
Garrett	1	174.33	NPI*
Harford	7	1,289.32	1,098
Howard	11	1,600.72	1,279
Montgomery	1	211.34	NPI
Washington	3	422.46	1,406
Totals	80	11,483.57	\$1,078

\*Not public information.

Source: Maryland Agricultural Land Preservation  
Foundation.

Table 15-4

THE COST OF DEVELOPMENT RIGHTS PER ACRE, MARYLAND PROGRAM FY 1980

<u>County</u>	<u>Acres</u>	<u>Number Properties</u>	<u>Asking Price</u>	<u>Theoretical Value</u>	<u>Offer to Buy</u>
Carroll	1,879	11	\$1,115	\$923	\$823
Howard	762	3	2,974	1,444	1,434
Anne Arundel	90	1	1,978	1,582	1,582
State Total	2,730	18	1,662	1,087	1,018

Source: Maryland Agricultural Land Preservation Foundation.

Table 15-5

THE COST OF DEVELOPMENT RIGHTS PER ACRE IN CARROLL COUNTY,  
MARYLAND PROGRAM, FY 1980

	<u>Asking Price</u>	<u>Theoretical Value</u>	<u>Offer to Buy</u>
High	\$2,068	1,493	1,493
Weighted-Average*	1,115	923	823
Median	1,400	868	868
Low	434	643	434

\*Total dollar value divided by total acreage.

Source: Maryland Agricultural Land Preservation Foundation.

buy by the state averaged 61 percent of asking prices, indicating that owners tended to ask a high price but were willing to negotiate. The offers to buy, however, averaged 94 percent of the theoretical value, indicating that the state's attempt to introduce price competition into the process did not have a very large effect on the final outcome. Substantial variability of prices among individual parcels is indicated by Table 15-5, which summarizes information for the 11 properties in Carroll County.

In general, officials of the Maryland Agricultural Land Preservation Foundation are satisfied with the program the Foundation has developed. In spite of the fact that the program is still young and public awareness of its provisions is not as informed as it could be, a high degree of support has been apparent in program enactment and funding by the state legislature, cooperation from other state agencies, and active participation by local governments and farmers. This widespread support can be largely explained by the political acumen of those who drafted the original legislation, for in that act it was mandated that the Board of Trustees of the Foundation (the major policy and decision-making body) include the State Treasurer and the Secretary of Agriculture as ex-officio members, a representative of the Department of State Planning, five active or retired farmers from different areas of the state, and three at-large members. All trustees are to be appointed by the Governor. The requirement that one of the farmer representatives be chosen from a list of nominees submitted by the Maryland Agricultural Commission, another from a Maryland Farm Bureau list, and a third from Maryland State Grange nominees assured additional involvement of agricultural organizations. By requiring active involvement by farmers, farm organizations, and a state planner in policy formulation and implementation, potential conflicts with those groups were internalized and they were given a vested interest in the success of the program.

Although the Foundation is generally satisfied with its agricultural land preservation program to date, the first year's experience has suggested some potential improvements. The first of those is now before the State legislature, and involves a change in the priority system for purchasing easements based on competitive bids. The new system would retain a purely price competitive system for easements which are offered at a discount, but would assign all other offers a numerical value which reflects the relative productivity of the land, the extent to which easement acquisition would contribute to the continued availability of agricultural suppliers and markets,



and the priority recommendations of the local governing body. Another likely change is the introduction of a system whereby the state could intervene rapidly on a voluntary basis with easement purchase in cases of estate transfers where a valuable farm would be lost to development. The time-consuming nature of the two-step process of district formation and easement sale does not presently allow fast movement in such 'emergency' situations. Although the Board of Trustees is aware of this and other forms of 'fine tuning' which would improve the program, they feel that substantial change would be inadvisable right now because it might fuel charges of instability by various skeptics. In the future, however, minor adjustments are likely.

Two other program advocates also agree that it has gotten off to a successful start. Senator James Clark, President of the Senate and sponsor of the original legislation, is satisfied with the districting and easement sale format of the program which he sees as 'a real tool' for young farmers. The Senator would like to see annual funding stabilize at between \$10 and \$15 million, and is consequently trying to educate other members of the General Assembly as to the need for widespread preservation of agricultural land. The legislative analyst for the Maryland Farm Bureau, Jack Miller, is another active promoter of the state program. His organization is particularly pleased with the flexible, voluntary nature of the program as well as with the concentration of control (in the form of a veto power) in the hands of local governments. In keeping with the National Farm Bureau policy that individual landowners must be compensated for the dedication of privately owned lands to exclusive agricultural use, the Maryland Farm Bureau recommends "that state funds for the preservation of agricultural land be substantially increased to meet the need to preserve this very valuable resource."<sup>23</sup> Increased levels of funding is thus the Farm Bureau's major suggestion for improvement of Maryland's agricultural land preservation program.

The Department of State Planning is involved in the state agricultural land program in a variety of ways. The Department has direct input into the program because of the legislative requirement that a representative of the planning department be one of the nine members of the Foundation's Board of Trustees. Also important is the Department's mandate to serve as the planning arm for Program Open Space, because a significant percentage of the agricultural preservation funds come from Program Open Space funds. In addition, any future use of bond money for easement purchase will be reviewed by

the Department of Planning in its capacity as the Governor's Capital Planning Agency. In spite of all these linkages, it was only with the recent appointment of a new Secretary that the State Planning Department has broadened its horizons to concentrate on policy-making and comprehensive planning rather than capital programming and budgeting. In its most recent "Maryland Outdoor Recreation and Open Space Plan - 1978," the Planning Department for the first time formally recognized the importance of agricultural lands to park and open space planning. An entire section of that report is devoted to agricultural/open space considerations, strategies, and recommendations. It provides, in summary, that "it is the policy of the State of Maryland to fully integrate that state's agricultural preservation program with the state open space and outdoor recreation program."<sup>24</sup> Endorsement of the preservation program is implicit in the recommendation that the state continue to allow the use of Program Open Space funds for the purchase of agricultural easements. An additional recommendation that the agricultural program be included in a comprehensive planning framework for the entire state, is presently being attempted by the newly-created State Development Council.

Additional perceptions of the Maryland Agricultural Land Preservation Program have been provided by Stanley D. Schiff, economist, consultant, and publisher of the monthly Farmland Preservation Survey. In an article in the October 1979 issue of the Journal of Soil and Water Conservation, Mr. Schiff points out several deficiencies in the program. The first is that it fails to distinguish between the conditions and needs of suburban and those of rural areas<sup>25</sup> in its requirement that one-half of all funds be distributed equally to all counties participating in the program and the other one-half to those counties willing to provide matching funds for purchase. As Mr. Schiff says, "this formula may make good sense politically, but little sense in preserving farmland."<sup>26</sup> In actual fact, participation in the program to date has on its own generated the rural-suburban differential which Mr. Schiff proposes: the counties subject to the most development pressure (the suburban counties) are those which have witnessed the greatest farmer interest in both district formation and easement sale. The counties in which easements are being bought in the first round of state purchases are all within the Baltimore SMSA. Another deficiency cited is the inadequacy of the incentives for farmers to form districts, although the strong response of the farmers in the first year of operation and the high level of legislative appropriations suggest that the incentives are sufficient.



If the FY 81 level of funding (\$6.25 million from state and local sources) is maintained and the \$1,100 per acre average asking price does not increase, Maryland can expect to purchase easements on 56,820 acres of farmland over the next ten years. This represents a mere 2 percent of all the land in farms in the state, and is far short of the 1.5 million acres tentatively recommended in the 1974 Report of the Committee on the Preservation of Agricultural Land. Even the sought-after funding levels of \$10 million to \$15 million would account for only 3.2 to 4.8 percent of all farmland. At the moment, however, purchase of easements on 5,000 acres of farmland each year would cover one-half of land in districts based on the present rate of district formation. This would be sufficient funding to maintain farmer interest in the program, for the Foundation expects that approximately one-half of the farmers in the program will remain in districts and not offer to sell easements on their land. They base this expectation on the relatively high average age of Maryland farmers (52 in 1978<sup>27</sup>), many of whom are not themselves interested in selling only part of their equity in land but who will remain in districts to insure that their heirs have that option.

Mr. Schiff is not completely critical of the Maryland program: the fact that a preservation program exists at all is an indication that the principle of preservation has been widely accepted. He also cites the consciousness-raising effect of the legislation as another benefit, for it has influenced the attitude of local officials and may lead to more effective county agricultural preservation programs in the future.

In summary, most organizations and individuals involved or particularly interested in the Maryland Agricultural Land Preservation Program are satisfied with its operational performance during its initial year, and gauge it to have been quite successful. All those interviewed suggested the need for minor adjustments in some of its aspects, and emphasized that more time would have to pass before its ultimate value in preserving farmland could be finally assessed.

#### E. Role of Local Governments

By conscious design on the part of those who drafted the Maryland Agricultural Land Preservation Foundation Act, the state preservation program is heavily dependent on the cooperation of local governments. No district may be formed or easement sale application approved without the consent of the county governing body, which, in turn, relies upon the



local APAB and planning and zoning body to review and offer recommendations on all proposals.

Concern about the loss of agricultural land in Maryland originated at the local level, and many counties throughout the state are in various stages of experimentation with different agricultural land preservation techniques. Two counties of particular interest are Howard and Baltimore, both of which are within the Baltimore metropolitan area and are consequently faced with suburban pressures leading to significant loss of agricultural land. In spite of their geographical proximity, the two counties have gone in different directions seeking solutions to this problem. The first two parts of Section IV will look at each county separately to describe the basic outlines of their programs, while part C will compare the two responses and postulate reasons for the differences.

#### IV. COUNTY/STATE DYNAMICS: THE VARYING RESPONSES OF HOWARD AND BALTIMORE COUNTIES

As in most other states, the legislature of Maryland has decreed that local governments (counties and Baltimore City in Maryland) have exclusive jurisdiction over planning and zoning.<sup>28</sup> Pursuant to this responsibility, all Maryland counties have adopted some form of general comprehensive plan, but success in implementing these plans has been uneven at best.<sup>29</sup> A large part of the problem can be traced to the fact that in Maryland, although the zoning enabling act states that zoning should be done in accordance with a comprehensive plan, such a plan is "but a guide or scheme recommended to the legislative branch in order to enable them to make intelligent decisions with respect to the adoption of zoning classifications." [*Iverson v. Zoning Bd.*, 22 Md. App. 265, 322 A.2d 569 (1974)]. The advisory nature of plans in Maryland is in sharp contrast to the situation in California, for instance. In that state, a statute mandates that city and county ordinances shall be consistent with adopted land use plans. Because of the weak connection between comprehensive planning and local zoning in Maryland, there is often confusion as to the real purpose of comprehensive planning and inconsistency between local zoning ordinances and local comprehensive plans.

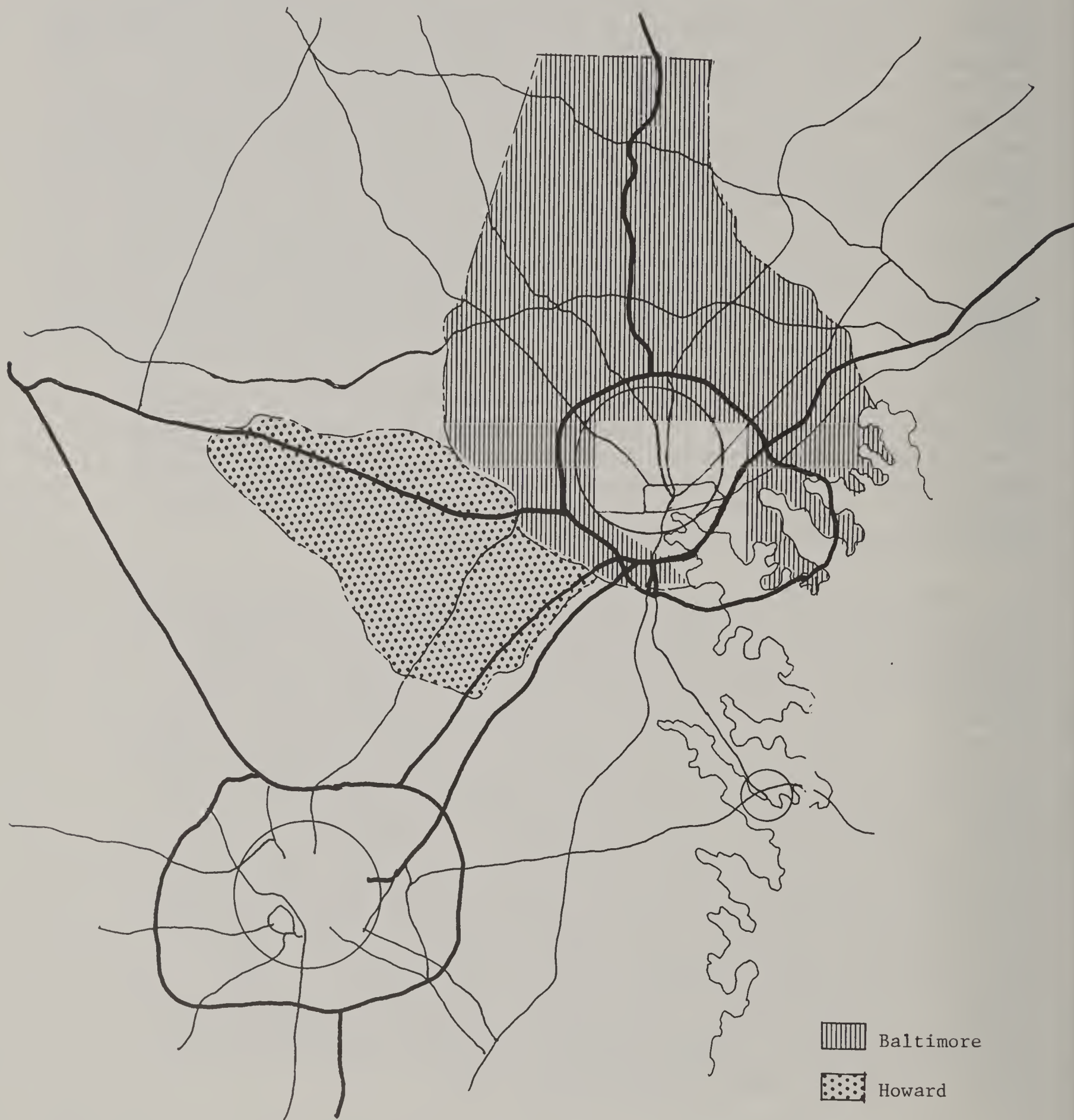
The Maryland Agricultural Land Preservation Program has intervened in the planning functions of local governments by requiring local approval of district formation to consider compatibility of districts with existing county plans and policies. The state program is totally dependent on the initiative of local governments and individual farmers for its success, a characteristic which was consciously written into the Act to win support from local officials throughout the state. Participation in the program is voluntary, and 13 of 23 counties have thus far taken the steps necessary to be able to participate fully in the state program. Nonetheless, "counties with rapidly growing areas need an immediate solution to growth problems and cannot afford to wait to see if the voluntary state program will be effective."<sup>30</sup> Both Howard and Baltimore Counties (see Figure 15-3) are just such 'rapidly growing areas', and their own local programs have been formulated to address their immediate problems of suburban sprawl and agricultural land loss.

##### A. Howard County

Howard County is located within easy commuting distance of both Baltimore and Washington, D.C., readily accessible

Figure 15-3

LOCATION OF BALTIMORE COUNTY AND HOWARD COUNTY





from both by I-95, U.S. 1, and U.S. 29. As a consequence, it has the distinction of being the fastest growing county in Maryland: its population increased by 55 percent between 1970 and 1975, a rate of growth twice as fast as that occurring in any other county in the state as of 1976.<sup>31</sup> By 1978, its population had reached 117,000, and a countywide population density of 465 persons per square mile. Such rapid population growth will alter a given landscape to a greater or lesser extent depending on where that growth is occurring. In Howard County, between 1970 and 1973 only 20 percent of the acreage consumed by subdivision was outside the county's ten-year water and sewer district; by 1975 that figure had more than doubled, and for the first time both the percent and actual acres of land subdivided on non-sewered land exceeded those on sewered land.<sup>32</sup>

These two trends of increasing population growth and dispersal of that population away from the planned urban areas of the county have led to drastic changes in the agricultural landscape of Howard County. In 1950, 122,560 acres (76.6 percent of the 160,000 acres in the county) were in agricultural use. In 1978, only 52,800 acres (33 percent) remained in farming.<sup>33</sup> As the land base declined, the character of the remaining farms changed as well. Up through the 1974 Census, data on Howard County indicated that it was following the national trend of a decline in the number of farms accompanied by a rise in their average size. Between 1974 and 1978, however, this trend was reversed, as the number of farms in the county increased from 356 to 417 and the average farm size fell from 184 to 140 acres. In 1978, 48 percent of the farms in Howard County were smaller than 50 acres.<sup>34</sup> This trend reversal may signal the increasing severity of the impact of suburbanization on local farmers, for parcels of land large enough to be farmed efficiently are decreasing in number as well as size. An additional potential detrimental effect of smaller parcel size is the increased per-acre land value which frequently characterizes smaller lots. The average value of land and buildings of Howard County's farms increased from \$1,742 per acre in 1974 to \$3,091 in 1978 (compared to national figures of \$302 and \$488, respectively);<sup>35</sup> few farmers find that farm profits justify paying such high prices.

Not all the news about Howard County agriculture is bad. Soil resources of the county are richly favorable for agriculture, with 114,000 acres (71 percent of the county) classified by the SCS as "prime or productive soils suitable for intensive cropping."<sup>36</sup> In 1975, there were 77,000 acres of those soils remaining in agricultural or forest use outside of the

ten-year water and sewer district. Productivity of the land is high, and the market value of all agricultural products sold is steadily rising: between 1974 and 1978 the annual value increased 54 percent from \$11.4 million to \$17.5 million, a large increase when compared to the 9 percent increase in the index of prices received by farmers for all products which occurred during those same four years.<sup>37</sup> A large percentage of these total receipts is recycled through the local economy as farmers purchase materials, labor, and other services to keep their farms operating. The importance of agriculture to the Howard County lifestyle and economy provided the impetus for initial efforts in that jurisdiction to formulate a program by which the local government could address the problem of loss of agricultural land.

### 1. History of Action

The initial impetus for public action dealing with the issue of agricultural land preservation in Howard County came not from a farmer, but from a newly elected councilwoman and a resident of Columbia, Ruth Keeton. In January of 1975, Ruth Keeton had several meetings with the County Extension Agent to discuss potential agricultural land preservation programs for the county. The two then armed themselves with soils maps and estimates of County subdivision activity and went to a meeting of the local Young Farmers Group (part of the Farm Bureau organization) to ask those farmers how they felt about the issue. The first question they posed was: Is it too late to save farmland in Howard County? Of the 22 families present, only one couple answered affirmatively. The next question was thus: Will you work to get an agricultural land preservation program started? Five families volunteered, thereby becoming (with Ruth Keeton) the core of a task force sponsored by the Young Farmers entitled the Work Force for the Preservation of Howard County Farmland. As a general framework for their activities they decided to investigate alternatives, test the proposals, and recommend a program to preserve farmland in Howard County. The Work Force members volunteered all of their labor themselves, and also obtained technical advice at no charge from the University of Maryland, Howard County Offices of Planning and Zoning and of Finance, the Howard County Bond Counsel and Fiscal Advisor, the local Agricultural Extension Agent, the manager of the Soil Conservation District, the Soil Conservation Service, and the Maryland Department of State Planning. Local residents with federal and state responsibilities of various kinds were sought out for support and advice, and many came through with invaluable assistance. In addition, within one year of the



initial formation of the Work Force over 200 'sponsors' had lent their name or provided financial support to the effort. These included farmers and businessmen; rural and urban, recent and long-term residents; several civic associations; and the Howard County Sierra Club.

Having set their objectives and started to broaden their base of support, the Work Force began to collect data in earnest in the spring of 1975. Volunteers compiled data on 1969, 1972, and 1974 trends in conversion of agricultural land by election district. Others evaluated traditional and innovative agricultural land preservation techniques proposed or in use in other counties and states. The Soil Conservation Service and Extension Service staff identified all farms according to whether they were owned by resident-farmers, leased, or owned by outside owners. That summer, the Department of State Planning discovered they had \$10,000 in 701 funds remaining to be disbursed, and offered it to the Work Force to aid in their task. The money was gratefully accepted, and spent primarily for educational materials, including the printing of the Work Force's final report and summary.

By early 1976, the Work Force had evaluated the data its members and technical advisors had compiled, and also had available a 'cost of sprawl' study prepared for them by the Montgomery County Planning Commission staff. They then turned their attention to choice of a program suitable for implementation in Howard County, and ultimately decided upon a purchase-of-development-rights approach. The criteria they used in choosing this program included:

- it must respect the market value of farmland;
- it must be practical for committed farm owners;
- it must be economically viable for owners of prime agricultural land;
- it must be understood and valued by the larger community;
- it must not pose an unrealistic burden on homeowners and taxpayers; and
- it must be understood that, for the older farmer, his land is his bank account and estate and therefore, his long-range and short-term interests must be preserved.

The pragmatic attitude of the Young Farmers is apparent in the above list, as is a twinge of fear of taking. It should also



be noted that by 1976, the State Committee on the Preservation of Agricultural Land had recommended agricultural districting and easement purchase at the state level, a recommendation which was strongly supported by Senator Clark, President of the Senate and a resident of Howard County. All of these factors contributed in varying degrees to the Work Force's selection of a purchase-of-development-rights (PDR) approach for preserving farmland in Howard County.

In addition to deciding upon a method for the preservation of farmland, the Work Force also set a goal of preserving approximately one-quarter of the county's remaining agricultural land, or 20,000 acres. The practicality of this goal was supported by data collected by the county planning staff in preparing the proposed Comprehensive Zoning Plan, 1976. The staff found that existing zoning within the ten-year water and sewer district could accommodate 40,000 more people than the General Plan anticipated entering the area by the year 2000. The planners also compiled a list of all parcels smaller than ten acres outside of the urban services area, and discovered that a 36 percent increase in the present number of dwelling units could be accommodated on that portion of the unimproved land. Thus, it was found that anticipated population growth and preservation of at least 20,000 acres of agricultural land could both be accommodated given the available land resources of Howard County.

Once the Work Force had itself decided upon PDRs, it published a summary of its recommendations in the form of a full-page advertisement in the county newspaper. Readers could request more information or sign up as sponsors of the Work Force. A subcommittee was named to develop implementation measures, which were completed by the time the Work Force published its final report in October of 1976. Many of the recommendations of the Work Force and its subcommittee were incorporated into a bill setting up a local PDR program which Ruth Keeton introduced and the County Council passed in 1977.

All was not well, however, for one county resident (not a farmer) was strongly opposed to the program and was able to collect 2,000 signatures to force the bill before a county-wide referendum. By this time the Work Force and its sponsors were well organized, and they all geared up for a diversified, active campaign in support of the agricultural land preservation program. They prepared colorful, informative posters and displayed them at the County Fair and at numerous public meetings, and an insert presenting a summary and plea for sup-

port of the program which was included in the local 'free newspaper'. Both candidates for County Executive and the local state senator came out strongly in support of the bill. They contacted local political parties and asked them to include a positive statement about the program in their door-to-door canvassing. Finally, the Work Force had volunteers at every polling place to explain the referendum item to all voters before they cast their ballot. The result of all these campaign activities was reward enough for all the hard work of the volunteers: the agricultural land preservation program carried with 54 percent of the vote, and it passed in every single election district, both urban and rural. On June 5, 1978 the "Agricultural Land Preservation" subtitle<sup>38</sup> was signed into law by the County Executive.

## 2. Program Description

The Howard County PDR program is intended to supplement the Maryland Agricultural Land Preservation districting and easement program. Unlike the state program, the Howard County program does not require the landowner to enter into an agricultural district prior to making application to sell a development rights easement. For a particular property to be eligible it must encompass all of one or more deeded parcels which comprise a minimum of 50 acres (smaller parcels will be considered if they are contiguous to land in the state or local program or to specified public watershed lands), contain a predominance of SCS Soil Classes I, II, and III or woodland groups 1 and 2 (2/3 of the acreage must be 'productive agricultural land'), and be capable of being developed into a high density, non-agricultural use. Additional weight is given properties which are subject to substantial development pressure, contiguous to other properties in the program, outside of the ten-year water and sewer district, and located so as to be consistent with and supportive of the intentions and policies of the County General Plan.

A landowner whose property meets the minimum eligibility requirements may apply to the County Office of Planning and Zoning to sell his development rights. The application must contain a firm asking price based upon a certified appraisal conducted at landowner expense (average appraisal costs are between \$500 and \$800).<sup>39</sup> Both the Office of Planning and Zoning and the local Agricultural Land Preservation Board (which consists of the five-member APAB appointed pursuant to the state agricultural land preservation law plus two other non-farmers appointed by the County Executive) review and make recommendations on all applications, and a public hearing is



also required. If the Board decides that a particular parcel should be included in the local program, two additional appraisals must be obtained by the Office of Planning and Zoning. The maximum purchase price which the county will pay for a development rights easement is 50 percent of the difference between fair market and agricultural use value of the land. If that price is too low for the landowner, the county may attempt to acquire the land in fee simple by negotiating an acceptable price with the landowner. Once the Board and the landowner have agreed upon a price for either the development rights or the land in fee simple, it is up to the County Executive to approve or disapprove the purchase.

Easements purchased or otherwise acquired by the county are to be held in perpetuity. The local program differs from that of the state in requiring that, with the exception of "acts of God", land upon which an easement has been sold must be continually cropped or the owner is subject to a charge equal to 10 percent of the easement value for each year the land was not productive. An additional restriction placed upon the owner is that he may not substantially reduce the agricultural value of the land by use of practices unacceptable to either the USDA or the Maryland Department of Agriculture (e.g. the farmer may not operate his business so as to cause extensive soil erosion, sedimentation, etc.). The county is empowered to seek an injunction in Circuit Court to halt any such practice and to seek monetary damages of up to 25 percent of the value of the easement. Both of these restrictions reflect the local government's concern for the economic aspect of preserving farmland by insuring that land in which the county invests will continue to make a significant contribution to the local economy as a viable agricultural operation.

Funding for the Howard County agricultural preservation program was negotiated by Senator Clark, who was able to get one-quarter of the 1 percent local real estate transfer tax re-allocated from the storm drainage program to the farmland program. Because of Howard County's rapid population growth, this tax had been generating approximately \$50,000 per month until the recent dramatic decrease in housing starts in response to national economic conditions and soaring interest rates. The County Executive decides whether this money should be used for the state or the local program first. This makes financial sense for the county, for under the state program the state will either pay the entire cost of the easement as part of the general easement purchase program or, under the matching fund program, it will pay 60 percent of the easement cost. Thus, Howard County contributes nothing or 40 percent to projects in



the state program. Under their local program, the cost to the county is 50 percent of the easement value, since that is the maximum amount they may pay according to the local legislation.

To date, Howard County has received no offeres for easement sale under their local program. There are several potential explanations for this:

- a landowner who submits an application for easement sale must incur the \$500-\$800 expense of a certified appraisal with no guarantee that his easement offer will ultimately be accepted. Under the state program, the state pays all appraisal costs.
- no agricultural land use protection is offered by the county until an easement has been sold. In the state program, a landowner must be in an agricultural district prior to making application to sell an easement; he thus receives some protection from potential nuisance suits while his application is pending.
- a landowner who sells an easement under the local program may be subject to a penalty fee or be sued for damages if he does not continually crop his land and utilize agricultural practices acceptable to the USDA or the Maryland Department of Agriculture. Under the state program, the holder of the development rights easements has no such punitive powers.

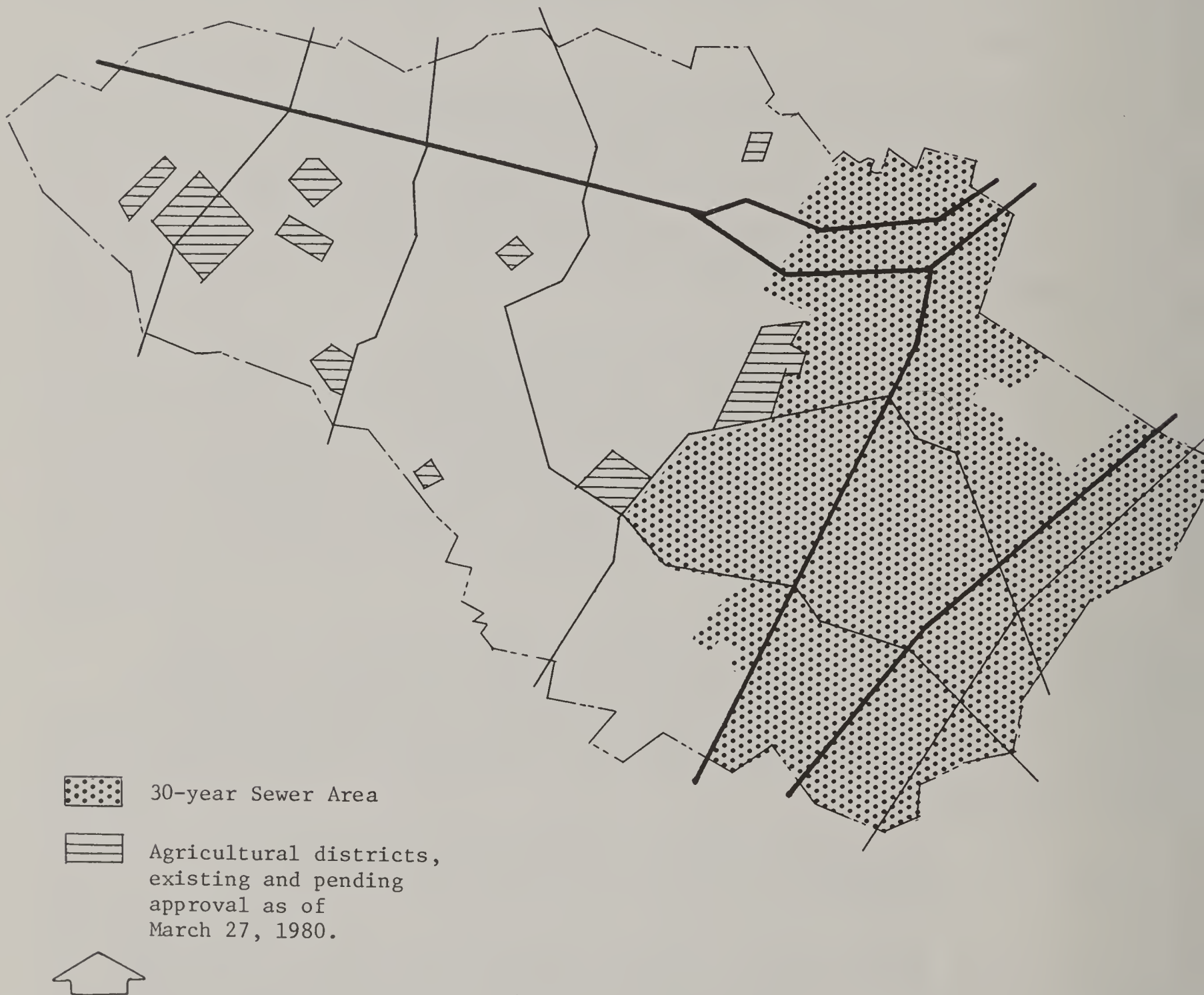
Landowners who might be particularly interested in the local program are those who cannot meet the 100-acre minimum state requirement but who can meet Howard County's 50-acre requirement, or those whose applications to the state program were rejected for lack of state funds even though local funds were still available.

### 3. Howard County Participation in the State Program

Howard County participation in the Maryland Agricultural Land Preservation program has been second only to that of Carroll County. As of March of 1980, ten agricultural districts had been formed in the county, totaling 2,350 acres. (See Figure 15-4 for a rough approximation of the location of the ten districts in relation to the ten-year water and sewer boundary.) Landowners within those districts represent a mix

Figure 15-4

SEWERED AREA AND AGRICULTURAL DISTRICTS  
IN HOWARD COUNTY, MARCH 1980



of working farmers and others who own the land, make a living in a non-agricultural profession, and lease the land to working farmers. In the first round of easement sale applications, three offers were submitted by Howard County farmers to sell easements on 765 acres of farmland. The state made offers on two of these, one of which was immediately accepted by the landowner. The others were expected to be purchased during the second round of purchase offers to be made before May 31, 1980.

Local commitment to a purchase-of-development-rights approach as exemplified by the successful PDR referendum in Howard County may partially explain the quick response of local farmers to the opportunities presented by the state program. An additional factor is undoubtedly the presence on the County planning staff of Dennis White, who was hired in April of 1979 specifically as an agricultural planner to handle the local program and local participation in the state program. He has been systematically contacting local farmers on an individual basis to explain the state program to them and to urge their participation in districts. In order to assign priority to properties for easement purchase, he has compiled a list of all landowners receiving agricultural assessment from the local tax records, presented it to the county extension agent or SCS representative, and asked them to identify the "bona-fide" or "legitimate" farmers. He has plotted those farmers' properties on a map to ascertain which may be grouped together to form contiguous districts. As part of this strategy, the County Executive sent a letter to 90 of the highest priority farmland owners urging them to consider district formation and suggesting that they contact Dennis White for additional information. The local Agricultural Land Preservation Board is also starting to take an active advocacy role, as individual members take it upon themselves to approach some of the more reticent farmers utilizing an 'old boy' network of contacts.

#### 4. Perceptions of the Program

Local perceptions of the success or potential positive impacts of Howard County participation in the state program vary considerably. The general sentiment among farmers seems to be that those farmers who are seriously interested in continuing to farm (most particularly older farmers with sons who would like to continue in agriculture and young farmers themselves) are in favor of the program. Support is often verbal rather than participatory, for the program is new and many farmers are adopting a 'wait and see' attitude. With farmland priced at \$3,000 to \$4,000 an acre in many areas of the county, the benefits of widespread participation in the



PDR program are apparent: a farmer may himself sell his development rights to obtain capital with which to expand his own operation. The existence of many properties from which the development rights have been sold will allow sales from one farmer to another, rather than the farmer-to-developer pattern of sales which is prevalent now. Additional hesitation about early participation in the program can be traced to uncertainty about national economic trends and a desire not to be the person who must iron out the wrinkles inherent in any new program. With interest rates soaring and investments unstable, one farmer pointed out that she wouldn't even know where to put the money if she sold her development rights. Other questions raised by farmers concern the tax aspects of the program: it appears that a farmer selling his development rights might have to pay a large capital gains tax on the money paid to him by the state, and questions still exist as to whether the gains can be spread over a number of years; the impact of easement sale on estate taxes is also unclear.

Ruth Keeton is pleased with the general structure of the program but believes it is not spreading fast enough. She is urging Dennis White to take a more active advocacy role by capitalizing on the existing institutional structures: the agricultural extension agent in Carroll County has been a primary advocate of their program, a role which the Howard County agent could also be urged to take; the local Farm Bureau should be enticed to set a "challenge goal" in terms of X acres in districts by the end of each winter season. Mrs. Keeton feels that it is the young farmers who are most interested in the program, and they need only be educated out of their innate distrust of government to increase their participation dramatically. One potential fault in that line of reasoning is the structure of Howard County agriculture: in 1974, 40 percent of the land farmed in the county was leased, much of it by younger farmers who cannot afford to purchase land outright.<sup>40</sup> As a consequence, it is frequently not the active farmers who control the land resource, so decisions as to district formation or easement sale are in the hands of non-farmers with a wide variety of long-term intentions for their land.

Dennis White feels that the county is "too close to the edge to sit around and wait for individual landowners to decide to sell easements." The state and local programs have both served to heighten public awareness of the problem of loss of agricultural land, an essential first step in dealing with any problem. But Mr. White is concerned that there will not be enough money available to make those PDR programs

effective, and in any case that Howard County is under too much development pressure for a voluntary program to be able to stem the tide. He fears that small, incremental losses of farmland such as are now occurring will add up to such an extent that someone big will eventually bail out--a dehydrator or feed and grain operation, for example. This could then lead to a precipitous decline in agricultural land as more and more farmers see themselves as the last of a dying breed. Until the PDR program can accumulate enough protected land to form the critical mass needed to support agriculture on a long-term basis, Mr. White feels that interim measures are needed. The county recently reinforced its ten-year water and sewer line into a 30-year water and sewer district, thereby indicating its intention not to extend public services beyond the existing district for at least 30 years and thus leaving the western part of the county free from infrastructure-induced urban pressure. Unfortunately, it is suburban sprawl rather than urbanization which is eating away at the local agricultural lands, and the existing three-acre zoning in the rural zone is definitely not preventing that. In recognition of this problem, the county is considering a variety of mechanisms to complement the state and local PDR programs. The County Executive and County Council are presently talking about instituting a program whereby the county would have the right of first refusal when agricultural lands are put up for sale. The government could then purchase critical lands in fee simple, later reselling the properties stripped of their development rights or subject to other restrictions. The Agricultural Land Preservation Board, with participation by the agricultural extension agent and Ruth Keeton, is also discussing the issue. Dennis White frequently takes charge of the Board meetings, and his predilection for an exclusive agricultural core surrounded by a buffer zone or preferential agricultural area often brings zoning to the forefront of discussions of alternatives. He senses that the farming community is opposed to zoning (a sentiment which was borne out in interviews with several local farmers and a representative of the State Farm Bureau), while the decision-makers may be more receptive to the idea. Mr. White thus feels that the task at hand is to convince local farmers of the need for agricultural zoning. To that end, he is presently generating a map which overlays subdivision plots on agricultural lands, a tool which will graphically portray the immediate threat to all remaining farmers.

In light of the fact that zoning is being seriously considered as a supplemental agricultural land preservation technique in Howard County, a protracted discussion of alternatives is not possible because of time constraints. Zoning amendments



will be finalized at a County Council meeting in the fall of 1980; the Board, Office of Planning and Zoning, and County Executive all hope to have reached a consensus on a recommended alternative prior to that time in order to test it with interested farmers, builders, and citizens' groups and thereby eliminate avoidable conflict before the public forum. In any case, the active interest by the County Executive, County Council, local Agricultural Land Preservation Board, and County Office of Planning and Zoning in additional measures to protect agricultural land indicate that Howard County's present reliance on voluntary districting and sale of easements may soon be supplemented by other, possibly regulatory, measures.

#### B. Baltimore County

Baltimore County contains no incorporated towns or political subdivisions in its 610 square miles. The county hooks around the eastern and western edges of the City of Baltimore and extends 23 miles north of the city. Much of its area, therefore, is relatively rural. The southeastern edge of the county is dissected by four parallel transportation corridors connecting Baltimore with the more northern megalopolitan urban centers: I-95, U.S. 1, U.S. 40, and Md. 147. These routes are all connected by the I-695 Baltimore Beltway, which circles Baltimore on the north, west, and south approximately three miles into Baltimore County. The only major thoroughfare connecting northern Baltimore County with the city is I-83, a limited access highway. This transportation infrastructure defines many of the county's settlements, with the more urban communities located within the Beltway to Baltimore fringe and extending along the major transportation routes, and the character of the landscape changing from suburban to rural as one proceeds from central to northern Baltimore County.

The population of Baltimore County has increased rapidly, from 270,000 in 1950 to 686,000 in 1977, and the trend is expected to continue.<sup>41</sup> Even though much of the northern part of the county is rural in character, the over-all population density of the county was 1,071 in 1977. The rapid population increase has exacted its toll in the southern reaches of the county in the form of congested roads, inadequate public facilities, and the pollution of air and water resources, and in the north through the loss of productive farmland. Between 1950 and 1974, land devoted to farming in Baltimore County decreased from 219,612 acres to 112,522 acres, representing a decline from 56.3 percent of the County's 390,000 acres to only 28.9 percent in 1974.<sup>42</sup> Concurrent with this decline in over-



all agricultural acreage there occurred a steady decrease in the number of farms (from 2,743 to 886 in that 24-year period) and a 46-acre increase in the average farm size to reach 127 acres by 1974.<sup>43</sup> These trends, however, underwent a reversal between 1974 and 1978. Land in farms in Baltimore County actually increased by nearly 2,000 acres during that period, the number of farms rose slightly to 911, and the average farm size remained virtually unchanged.<sup>44</sup> It is too early to tell whether this reversal is anything more than a short-term aberration, but it should not be allowed to obscure the fact that during the same period that more land was put into agricultural use, good farmland continued to be built on and removed from the county's land reserve base.

The market value of all agricultural products sold from Baltimore County farms has risen steadily over the years, reaching \$29.5 million in 1978.<sup>45</sup> Livestock, poultry, and their products contributed 45 percent of that total, with the income contributions of crops (including hay) and nursery and greenhouse products following in that order. Also important and somewhat unique to Baltimore County is horse farming, which is not included in the previous market value statistics. Of the 575 thoroughbred horse farms registered with the Maryland Horse Breeders Association, 163 (28 percent) are located within Baltimore County.<sup>46</sup>

### 1. History of Action

Zoning was first implemented in Baltimore County in 1945, at which time its primary function was to protect growing residential areas from unwanted commercial or industrial intrusions. Between 1955 and 1971, the rural (mostly agricultural) areas of the county were zoned "residual R.6," in which lot sizes were controlled only by Health Department requirements for a satisfactory percolation test and consequently averaged one-half to one acre. Most new homes built in the 1950's and early 1960's, however, were clustered around the existing village centers and had little impact on agricultural land and operations.<sup>47</sup>

During this time in which zoning was focussed on directing the placement of intensive land uses, and agricultural areas were lumped into a 'residual' residential zoning category, sensitive and innovative land use control mechanisms were being proposed in one small region of Baltimore County. The Green Spring, Worthington, and Caves Valleys comprise nearly 45,000 acres in the west-central portion of Baltimore County, forming a striking landscape characterized by broad, sweeping valleys

and wooded slopes. In 1962, the valleys seemed doomed to rapid urban encroachment, and some of the residents decided they wanted another future. The Green Spring and Worthington Valley Planning Council, Incorporated was therefore formed as a voluntary, non-profit citizen group to "prepare a plan to ensure preservation of the highest level of amenity with optimum development."<sup>48</sup> To that end the Council hired the planning firm of Ian McHarg and David Wallace to work with them in attaining those goals. The "Plan for the Valleys," published in 1963, outlined a general intent to protect the valley floors by severely limiting development, allow slightly increased densities on the valley walls, and concentrate development on the plateaus. This plan suggested a novel partnership of public and private powers to guide, control, and implement the plan. Although it was never formally adopted, the Plan for the Valleys represented a sensitive approach to planning based on sound ecological principles, an approach which was sought by the County 12 years later when they hired the same planning firm to prepare a county-wide Growth Management Plan.

In the late 1960's, there occurred a dramatic increase in the demand for rural lots in northern Baltimore County, leading to concern about water quality in several of metropolitan Baltimore's water supply reservoirs located in that area. Acting on this concern several citizens' groups, the planning staff, and the Planning Board combined their efforts and developed proposals for two new zones in the rural areas. The position of the Planning Board was that intensive development should be prevented in the North County area until a land use plan could be developed which would take into account agricultural lands, other natural resources, projected residential growth, and the county's ability and intention to provide the services necessary for development. The proposed rural zones included R.D.P. (Rural: Deferred Planning) with a ten-acre minimum lot size "to foster conditions favorable to agriculture" and R.S.C. (Rural Suburban: Conservation) with a three-acre minimum lot size to allow residential development in areas not planned for servicing by public water and sewer systems.<sup>49</sup> When the County Council adopted the new zones in 1970, they reduced the minimum lot size for all rural zones to one acre, thereby destroying the intent and potential effectiveness of the zoning scheme. Baltimore County was in the middle of a growth boom at that time, so public outcry over the proposed restrictive zones was loud and politically convincing.

Between May 1971 and December 1976, the one-acre rural zones were in effect in the northern part of Baltimore County. During that time 11,368 acres of land (41 percent of it con-



taining prime or productive soils) were subdivided into 3,781 lots.<sup>50</sup> It was apparent that existing controls in the rural areas were ineffective in moderating growth. Consequently, the planning staff initiated a program to prepare a comprehensive plan for the rural area. An enormous amount of data was collected during 1973 and 1974 to aid in plan formation, covering such categories as existing land use, natural resources inventory, soil suitability for development, septic systems, wells, population, economy, housing, transportation, community facilities, capital improvement program proposals, and county policies. At the instigation of the planning staff, a citizens' group was formed to assist in the preparation of the plan. This North County Advisory Group, formed in March of 1974, was comprised of citizens with a vested interest in the rural county: farmers, realtors, community groups, businessmen, the local Farm Bureau, and representatives of Baltimore City who were interested in land use protection of their reservoirs.

Guided by the professional planning staff, the Advisory Group got involved in formulating zones for the North County, and therefore became interested in resource conservation zones. Five such zones were proposed by the Advisory Group, one of which was an R.C. 2 (agricultural) zone. Several formulations of this zone were discussed and rejected because of questions of legality and effectiveness in preserving farmland (large-lot zoning) or because of concern about destroying a farmer's equity (development only by special exception). The zone definition finally proposed by the Advisory Group, planning staff, and Planning Board utilized a sliding scale formula patterned after that of Codorus Township in York County, Pennsylvania. A maximum of six lots could be created on the least agriculturally productive land of the first 100 acres, with one additional lot permitted for each 25 acres on tracts larger than 100 acres.

The first public hearing on the proposed Resource Conservation zones was held in March of 1975. Several speakers opposed the sliding scale as being too restrictive; in response to this criticism, a subcommittee of the Planning Board drafted a special exception procedure which would allow increased development on non-productive land. The second public hearing in July generated little support for the special exception idea, with objections centering on its administrative complexities, and convictions that farmers would not pursue an exception procedure. Nonetheless, in August the Planning Board recommended a sliding scale with a modified special exception provision to the County Council.



After holding one public hearing of its own on the proposed zoning changes, the County Council made several amendments to the Planning Board proposal and adopted the new Resource Conservation zones in November of 1975. The R.C. 2 zone allowed a maximum of 20 lots per 100 acres on a sliding scale, a significant 'wateringdown' of the six per 100 acres recommended by the Planning Board. Other zones adopted included R.C. 3 (Deferral of Planning and Development), R.C. 4 (Watershed Protection), and R.C. 5 (Rural Residential). All of these zones were to become effective in November of 1976 when the 1976 Comprehensive Zoning maps took effect at the end of a scheduled four-year cycle of comprehensive zoning map revisions. The planning staff recommended that a moratorium on building permits be put in effect between November 1975 when the zones were adopted and October 1976 when they were to take effect. Neither the Planning Board nor the County Council acted on this suggestion, with the result that there was a rush to get final plats for subdivisions recorded during that year. All final plats were to be 'grandfathered in' once the new zone took effect.

While the rural zones were being debated and enacted into law, growth in Baltimore County continued unabated, leading to overloading of some of the public sewer and water systems. In 1976 a committee was formed to prepare legislation dealing with such areas with inadequate public facilities. Also in 1976, a new County Executive was elected who based his campaign on a "throw the rascals out" theme and who was interested in innovative planning techniques. The county therefore contracted for a Comprehensive Growth Management Plan with Wallace, McHarg, Roberts, and Todd, the planning firm (with two new partners) which had prepared the "Plan for the Valleys" in 1963. At the same time, an Interim Development Control Act (I.D.C.A.) was imposed to limit development sharply while the plan was being formulated. In the R.C. 2 zone, which covered 119,000 acres, only two lots per parcel could be subdivided during the 24 months in which the IDCA was to be in effect. The need for such extreme restrictions had become apparent during the four months in which the R.C. 2 zone was in effect prior to imposition of the IDCA: 221 tracts were subdivided in those four months, representing a loss of 1663 acres of agricultural land.<sup>51</sup>

Two advisory committees were appointed to meet with the planning consultants and provide input into the process of formulating a plan, the Citizens Advisory Committee (this had a Farm Bureau representative) and the Technical Advisory Committee. By the spring of 1979 when the Growth Management Plan was completed, the state Agricultural Land Preservation

program had been passed and Baltimore County had appointed a local Agricultural Preservation Advisory Board. (Preoccupation with growth management precluded full county participation in the state program at that time.) The proposed Growth Management Plan as submitted by the consultants included both growth limiting and growth promotion elements. Upon receipt of the plan the Planning Board and staff realized that it would need detailed review and revision, so the IDCA subdivision restrictions were extended until November of 1979 as a 'Plan in Progress' extension. During that time, the Planning Board and staff modified the plan to meet the needs of the County, including in the modifications imposition in the rural zone of a sliding scale allowing a maximum of two subdivided lots for owners of land between 2 and 100 acres in size. The Planning Board modified plan was submitted to the County Council in early fall, 1979. The Council then added further modifications, and in November of 1979 they adopted a text for the proposed zoning changes as emergency legislation,<sup>52</sup> thus allowing the changes to go into effect immediately. The Council did not, however, adopt a zoning map when they adopted the Growth Management addition to the Baltimore County Zoning Regulations. Until such a map is adopted, the new R.C. 2 regulations will affect the 119,000 acres (approximately 1/3 of the county) presently contained in that zone.

## 2. Program Description

Changes in the definitions of the Resource Conservation zones, including the R.C. 2 (agricultural) zone, were adopted as part of a growth management article which was added to the Baltimore County Zoning Regulations (new article 4A). The intent of the new article was to implement those objectives, policies, and standards within the County's Master Plan "relating to the assimilation, location, quantity, quality and timing of growth and development in Baltimore County, the provision of adequate public facilities to support development, and the protection of agricultural and environmentally-sensitive land in the resource zoning classifications..."<sup>53</sup> Management of growth is to occur primarily through management of the construction and use of public water, sewer, and transportation facilities. Building permits and subdivision approvals will be issued only to individuals who have obtained a reserve-capacity-use certificate from the Office of Planning and Zoning. Certificates will authorize only that development which meets certain water supply standards and which will not utilize more than the reserve capacity of the sewerage and transportation network in that particular locale. Development is to be carefully monitored by the Office of Planning and Zoning, which



must publish semi-annual reports evaluating consistency of that development with county plans, policies, and programs, and suggesting appropriate action to correct deficiencies to the Planning Board and County Council.

An integral part of the growth management program is the revised definitions of the Resource Conservation Zones. The R.C. 2 zone has been made much more restrictive in order to preserve agricultural land more effectively. Uses permitted as of right include single family detached dwellings at very limited densities, trailers, farmers' roadside stands, home occupations, and tenant houses, among others. Other uses are permitted by special exception, but such exception is to be granted only if the use is not detrimental to the primary agricultural uses in its vicinity. Among the special exception uses are various agricultural support activities such as fertilizer sales or storage and feed or grain mills or driers, which were added at the urging of local farmers to provide the opportunity for such businesses to re-establish themselves. A special exception has been requested for a winery, one of the new special exception uses. The request was heard by the Deputy Zoning Commission, granted, and no appeals were taken.

Restrictions on residential subdivision in the R.C. 2 agricultural zone are in the form of a sliding scale.<sup>54</sup> No lot containing less than two acres may be subdivided, and parcels of between 2 and 100 acres may be subdivided into a total of only two lots. Owners of properties which are larger than 100 acres are allowed to subdivide one lot for each 50 acres of gross area. No lot smaller than one acre may be created in an R.C. 2 zone. The zoning ordinance also makes direct mention of the compatibility of its provisions with the agricultural districting provisions of the Maryland Agricultural Land Preservation program. When an agricultural district is formed as part of the state program and there is a conflict between the zoning and districting provisions, the district regulations are to prevail.

The enactment of such a restrictive agricultural zone in the heart of the northeastern Megalopolitan corridor is an unusual occurrence. There are several possible explanations for its relatively uncontested passage. In Baltimore County, county councilmen are elected by district, so there is one council member who represents most of the rural area of the county. James Smith, the rural area councilman, was strongly committed to agricultural preservation when he went into office. One theory mentioned in interviews with Baltimore County residents holds that Councilman Smith held out for a sharply restrictive R.C. 2 zone; in return for support of that



zone, he 'sold out' on the R.C. 5 areas, accepting a minimum lot size of one acre instead of two acres.<sup>55</sup> Another factor which may have contributed to a minimum of opposition is the national economic slow-down. The growth boom appears to be over, at least temporarily, so expectations of enormous profits from high-density subdivision have lessened.

Also important was the fact that the agricultural zoning was incorporated in a comprehensive growth management package. Not only did this forestall charges of growth obstructionism from development-oriented interests, but the fact that so much was passed in that one bill led to a situation in which many people did not even realize just what the bill contained.

Perhaps the most surprising fact about enactment of the restrictive agricultural zone is that the bill was actually supported by local farmers and the Baltimore County Farm Bureau. The work of the planning consultants was of assistance here, for their maps of existing growth and projections about future trends graphically portrayed to farmers the results of unchecked growth. On the other hand, farmers were also disillusioned with the consultants' plan, which they felt did not address the issue of long-term protection of agricultural land. They were more inclined to trust the planning staff, whose rural area planner had been on the staff since 1969 and who had consistently expressed a legitimate concern about protection of the agricultural industry. In addition, most farmers looked to particular individuals for leadership, and these were the farmers who were on the Agricultural Preservation Advisory Board or were actively involved in the local Farm Bureau group. These individuals were committed to farming, and they saw the agricultural zoning as a useful step in protecting agricultural land. There were, however, certain strings attached to this support for zoning: county participation in the state districting and easement program, including provision of at least some local matching funds.

The county met the first part of its side of this unwritten agreement in February of 1980 by passing a county ordinance allowing for district formation. In March, the Planning Board passed a capital budget which included a \$500,000 request for the easement purchase program for FY 81. The Board also recommended bond issues of \$1 million annually for the program for the next two years, and that this amount should be increased to \$2.5 million annually after that. These budget and bond recommendations were recently reviewed by the County Executive, who reduced the capital budget request. His recommendations were forwarded to the County Council, which adopted a Capital

Improvement Program in May totaling \$56,545,000 that included the funding submitted by the County Executive.

The urgency of the funding issue is made more evident by the fact that although a text for the zoning amendments had been passed as part of the Growth Management Plan, a land use map delineating those areas was not adopted. Baltimore County has a four-year cycle in which it reviews and adopts new comprehensive zoning maps. The County Council received Planning Board recommendations in March and will approve new zoning maps by October 15, 1980. By mid-summer 1980 the Planning Board has recommended retention of most of the existing 119,000-acre R.C. 2 zone, but public hearings and Council action on the zoning map may alter the final figure. If farmers and the rural area Councilman are unhappy with the budget, they can lobby to limit sharply or even eliminate those areas zoned R.C. 2 in Baltimore County; thus the agricultural zoning category would exist in name only, without being applied to any of the County's farmland. At the time of writing, this outcome did not appear to be likely.

Until a final zoning map has been adopted by the County Council, the effectiveness of this technique in preserving agricultural land will not be known. Since adoption of the new Resource Conservation Zone definitions, only three or four of the total of nearly 800 zoning issues brought to the attention of the planning staff have dealt with the R.C. 2 zone. Once the agricultural zone is finally mapped, one measure of its effectiveness will be the extent to which requests for rezoning to non-agricultural categories are denied. In this regard proponents of agricultural zoning in Baltimore County are fortunate, for a People's Council was created five years ago as part of the Office of Planning and Zoning to protect the integrity of the comprehensive zoning map. Since the map is formally revised only every four years, between revisions individuals wishing to have their land rezoned must have their rezoning application approved by the County Board of Appeals. The People's Council may appeal those decisions of the Board of Appeals which it feels are not consistent with the comprehensive zoning map. In its first five years of operation, the People's Council has "a 98 percent success record,"<sup>56</sup> so it appears that the focus of concern about the effectiveness of the agricultural zone should be on the legislative process involved in the four-year cycle of revisions to the zoning map.

### 3. Baltimore County Participation in the State Program

Baltimore County has been a full participant in



the State Agricultural Land Preservation Program only since February, but in the first month the county received seven applications for district formation on a total of 940 acres. In July 1980, four additional districts representing an additional 708 acres were presented to the County Council and three petitions representing 855 acres were pending before the county's Agricultural Preservation Advisory Board. The Board has set an admittedly optimistic goal of purchasing easements on 85,000 acres of farmland, or about one-half of the County's land eligible for the program. Their plan is to spread these purchases over 20 years, buying easements on 4,200 acres each year. Since it is highly unlikely that the state funding will increase sufficiently to make a major contribution toward the needed amount, the county is presently investigating the possibility of formulating a local purchase of development rights program similar to that in Howard County.

Within Baltimore County, farmer response to the state program is much the same as it is in Howard County: the potential benefits are large as long as funding remains adequate. In Baltimore County several young farmers are actively promoting the districting concept, for they themselves have applied to be in districts and they would like to extend that protection by involving neighbors in the program as well. Additional promotion of the program is being carried out by the Valleys Planning Council, original contractors for "The Plan for the Valleys" study in 1963. This group of primarily wealthy owners of large landholdings in the Green Spring and Worthington Valleys have a strong interest in the protection of their land and of the valleys. The director of the Valley's Planning Council feels that the county has done as much as it could for the Valleys residents: the County instituted an agricultural zone, and refrained from extending sewers into the valley lands. It is therefore hoped that private landowners will match that commitment, by supporting the agricultural land preservation program.

Continued funding for the state and local easement purchase programs will in all likelihood be contingent upon widespread participation in districts. The cycle is self-perpetuating: if more people form districts, the legislature will view this as an indication of increased support for the program, and will be more likely to vote for higher levels of program funding, which will in turn entice more people to form districts, etc. The Valleys' residents can accelerate this cycle by widespread participation in districts, an act which many of those residents can take without the need or the desire to sell their development rights. The Valleys Planning Council is now devel-



oping a strategy for accomplishing that participation goal, with the utilization of small group meetings in different geographical areas. All indications are that, both within the Valleys and throughout the rural areas of Baltimore County, interest in the state program is beginning to stir, and participation will be widespread and active by the end of the county's first full year of program activity.

#### 4. Perceptions of the Program

Since the revised definition of the R.C. 2 zone has been in effect for such a short time local residents have little to speak to when asked about their perceptions of the county agricultural land program. As befits their professional training, the county planners have high hopes for the agricultural zoning concept. Farmers have been persuaded to give the technique a try based on their generally good relations with the planning staff, but many express grave doubts about the permanence of zoning and feel that the developers are simply waiting for the next cycle of zoning revisions in order to reestablish their claim in the agricultural area.

A developer active in rural Baltimore County for many years disagrees with this perception. He said that agitation for protection of the agricultural areas of the county began in the mid-1970's, and since that time most developers have seen 'the "handwriting on the wall"' and have directed their investments to other counties or to more growth-oriented regions of Baltimore County. He did not see the restrictive zoning as having a significant immediate effect on development in the R.C. 2 areas, for not more than 300 people in the zone own more than 20 acres of land, and only about a tenth of those have any intentions of selling any portion of their land.<sup>57</sup> Thus, there is a significant lack of a potent political base for agitation to change the zoning. Builders and developers are unlikely to initiate any such action either, as one observer noted: "The developers usually use farmers as their 'front people' when fighting against restrictions on the use of agricultural land. In this case, however, the farmers supported the zoning, so the developers had to sit back and let it go through." The local builders and developers may object to the new restrictive zoning (and many do), but they will adapt to living with it as long as it is part of a comprehensive plan which allows them to make assessments of long-term potential for investment: "You tell us what the rules are, and we'll develop according to those rules."<sup>58</sup>

C. Factors Affecting the Responses of Howard County and Baltimore County

Although the state of Maryland is located entirely within the megalopolitan northeastern corridor of the United States, her citizens are fortunate in deriving nearly 50 percent of their food from Maryland farms.<sup>59</sup> Both Howard and Baltimore Counties contribute significantly to that local food production, but recent trends in agricultural land use raise serious questions as to their continued viability as food-producing areas. Between 1950 and 1974, each county saw nearly 50 percent of its farmland removed from agricultural production. Howard County is still witnessing such a decline, but Baltimore County actually reversed the trend from 1974 to 1978 and added nearly 2,000 acres to her farmland total. As can be seen from Table 15-6, with respect to other agricultural indices the two counties are following roughly parallel paths whose general direction corresponds to national trends in agriculture.

Population in both Howard and Baltimore Counties has been steadily and dramatically rising, with Howard County population increasing by more than five times during the period 1950-1978, and Baltimore County population increasing by a factor of 2.5. The location of Howard County, approximately midway between Baltimore City and Washington, D.C., has subjected all parts of the county to some degree of development pressure, and rural subdivisions dot the countryside. Baltimore County, on the other hand, is being pressured only by Baltimore City on the south, and as a consequence the northern rural areas form a significant block of primarily agricultural lands. It thus appears that both counties are experiencing a similar population-growth squeeze leading to agricultural land losses, with the primary difference between the two being one of degree, not kind: Howard County's situation is simply somewhat more urgent at the moment.

In light of this similarity in agricultural land problems and also of the fact that the two counties are adjacent to one another and share the same form of government, one might expect that Howard and Baltimore Counties would choose a common mechanism to attempt to preserve their agricultural lands. This was not the case, however, and the following paragraphs will list potential reasons for the choice of different approaches.

One of the most likely causes of the choice of different programs in Howard and Baltimore Counties is revealed by looking at the prime "movers and shakers" behind each effort to

Table 15-6

DEMOGRAPHIC AND AGRICULTURAL CHARACTERISTICS  
OF HOWARD AND BALTIMORE COUNTIES, 1950, 1974, and 1978

	1950		1974		1978	
	Howard	Baltimore	Howard County 1974	Baltimore County 1974	Howard County 1978	Baltimore County 1978
			% change, 1950-74	% change, 1950-74	% change, 1974-78	% change, 1974-78
<u>Demographic Factors</u> <sup>1</sup>						
Population	23,119	270,273			116,600	638,900
Pop'n per sq. mi.	92	445			466	1,051
<u>Agriculture Factors</u> <sup>2</sup>						
Land in farms (acres)	122,999	219,612	65,472	112,522	58,317	114,756
(% of land area)	(76.6%)	(56.3%)	(41%)	(28.9%)	(36%)	(29.5%)
Avg. farm size (acres)	117	80	184	127	140	126
% farms less than 50 ac.	37	53	--	--	--	--
Number of farms	1,051	2,743	356	886	417	911
Avg. per acre value of land and buildings	207	273	1,742	1,623	3,091	2,592
Mkt. value of all agric. products sold, \$1,000	754	3,595	11,376	21,253	17,505	29,461
Avg. age of farm operator	N.A.	N.A.	54	52	51	53

<sup>1</sup>Demographic factors derived from U.S. Department of Commerce, Bureau of the Census. 1950 Census of Population and "Estimates of the Population of Counties and Metropolitan Areas: July 1, 1977 and 1978" (1980).

<sup>2</sup>Agriculture factors derived from U.S. Department of Commerce, Bureau of the Census. 1950, 1974, and Preliminary 1978 Census of Agriculture.



formulate a program: in Howard, a County Councilwoman initiated action on the issue, but immediately surrendered the actual decision-making function to a self-selected group of Young Farmers once they became actively involved; in Baltimore County, the planning staff brought the issue to the attention of a wide array of actors and organized some of those interests into advisory committees, but the leadership function always remained in the hands of the planners. In their choice of a voluntary purchase of development rights program, Howard County was thus reflecting the pragmatic attitude of farmers who have an inherent distrust of government, an independent spirit, and a great respect for the market value and equity of their land. Baltimore County's program, to the contrary, reflected the professional planner's propensity towards zoning and therefore necessitated educating farmers and other residents about the potential effectiveness of such a tool.

Another factor of potential import in driving each county toward a different solution is the history and present status of planning in the two regions. Both counties were among the first in the state to develop comprehensive zoning ordinances in the 1940's, and planning of one kind or another has been going on since then. Baltimore County planners were exposed at an early date to innovative, environmentally-sensitive land use planning in the form of the "Plan for the Valleys" in 1963. Although it took over 15 years for that concept of planning to be formally adopted for the county as a whole, by the end of 1979 Baltimore County had a comprehensive growth management plan by which to achieve both development in some areas and conservation of natural (including agricultural) resources in other areas. Zoning is to be in conformance with this master plan, and the zoning map is updated in four-year cycles. A special agency is charged with preserving the integrity of the zoning map during mid-cycle requests for rezoning, so zoning is perceived to be reasonably stable and relatively non-political.

The planning and zoning processes in Howard County are not nearly so well coordinated. No periodic updating of the zoning map is required, so requests for rezoning are dealt with on a piecemeal basis and zoning is not widely perceived as a permanent land use control mechanism. Another factor which decreases confidence in the effectiveness of zoning is the lack of coordination between revisions of the master plan and revisions of the zoning map. For example, the Comprehensive Planning Division of the County Office of Planning and Zoning is presently working on the ten-year update of the Master Plan, which it intends to complete by June 1981. At the same time,

the County Executive and local Agricultural Advisory Board are formulating alternatives to supplement the PDR program, which they hope to implement as part of the zoning amendment process that is scheduled for the fall. It thus appears that the new agricultural program will be developed and implemented prior to, and independent of, the ten-year update of the Master Plan.

Certain differences in size and geography of the two counties may explain part of the variation in their approaches to agricultural land preservation. Baltimore County is nearly 2.5 times larger than Howard County in terms of land area (608 sq. mi. versus 250 sq. mi.), and it has nearly twice as much agricultural land within its borders. The sheer magnitude of the remaining acreage of farmland might easily have deterred serious thought about a PDR program in Baltimore County, for enormous amounts of money would be needed to protect even a small fraction of that land. The geography of the two counties is another factor which may have contributed to Baltimore County's attraction to zoning while Howard County shied away. As mentioned earlier, Baltimore County is subject to intensive development pressure only from the south, so the northern rural areas are still predominantly agricultural.

Actual land values in both counties were not possible to obtain or to generalize about, but it can be assumed that land values in an area subject to less development pressure would be lower than in a more rapidly developing region nearby. The rural north of Baltimore County would thus probably exhibit lower land prices than would rural areas in Howard County, although the agricultural use value of land in both counties would tend to be quite similar. Many analysts agree that areas (such as Howard County) exhibiting a wide difference between fair market and farm use value for land will be unlikely to embrace agricultural zoning because expectations for land profits have been heightened by the development potential, whereas areas (such as northern Baltimore County) within which fair market value more closely approximates agricultural use value are likely to be less averse to agricultural zoning.

One final factor which may have been influential in leading Howard County (rather than Baltimore County) toward a PDR program is the political and popular leadership provided in that county by State Senator James Clark. Senator Clark's family has been farming in Howard County for 200 years, and he himself has long been a proponent of agricultural protection programs in the Maryland Senate. His advocacy of a purchase of development rights program at the state level was



widely noted in his home county, and his control over various funding mechanisms undoubtedly lessened concern about inadequacy of local funds for easement purchase. As it turned out, Senator Clark played a leading role in obtaining funding for the Howard County program by enabling reallocation of one-quarter of the 1 percent local real estate transfer tax from storm drainage projects to the agricultural land preservation program. This unqualified political and financial support for one particular preservation method from a highly visible, well respected local political leader was absent in Baltimore County, so local planners there were left to their own devices in formulating alternative preservation mechanisms.

In their initial attempts to enact effective agricultural land preservation programs, Howard and Baltimore Counties turned to widely different approaches: Howard County relied wholly upon a voluntary agricultural districting and PDR system, while Baltimore County utilized a regulatory approach and incorporated agricultural zoning within a comprehensive growth management framework. Both programs are new enough that it is not possible at this time to make an assessment of their success in attaining land preservation goals. It is interesting to note, however, that the programs of the two counties are beginning to converge: the Howard County APAB and County Executive are seriously considering supplementing their PDR program with some regulatory controls, while Baltimore County is in the first stages of becoming a full participant in the state districting/PDR program and is considering a local PDR option as well. The complementarity of zoning and purchase of development rights was noted by several interviewees. Farmers as a group tend to favor such a combination, for the "sting" of the reduced options for use of their land is lessened by the possibility of getting a return on the development potential of their land while retaining agricultural use of it. (One developer did, however, raise the question of assignment of development rights: if land is zoned for only one dwelling unit per 50 acres, assignment of development rights based on that density renders them practically worthless. He recommended that development rights in agricultural zones be assigned as if the land were zoned for rural residential use.) Government officials also approve of combining zoning with PDRs, for the zoning provides them with a certain degree of control over landscape changes during the time in which farmers are getting used to the PDR idea and funds are being raised and allocated to the program. It was also mentioned in interviews with county officials that implementation of a PDR program in conjunction with agricultural zoning might provide a means by which to counter farmers' complaints that such zoning constituted a taking of their land without just



compensation. Carroll and Frederick Counties (Maryland) already utilize a combined zoning-PDR approach which has been well received by area farmers, and it is likely that many other Maryland counties will move in that direction in the near future.

D. The Enactment of Agricultural Land Protection Programs

Based primarily on the experience in Maryland, it is possible to set down tentatively some elements which appear to lead to the successful enactment of agricultural land protection programs.

1. The severity of the problem of agricultural land loss must be recognized by farmers, policy-makers, and the general populace.

In some cases this will only occur when the County Executive sees a subdivision spring up on his neighbor's farm or when development in rural areas becomes so scattered that more and more farmers find their activities hampered by resident complaints and trespass actions. In other cases, the problem can be recognized prior to the crisis stage by compilation of a strong, site-specific data base. Particularly useful is a map which overlays existing and platted subdivisions on agricultural lands: this graphically portrays to farmers and other landowners the immediacy of the threat. On the state level, statistics about the acreage of agricultural land lost, the increasing need for food imports, costs of sprawl, etc. may be used instead of site-specific data.

2. It must be widely recognized that current programs or policies are not adequately addressing the problem.

Land use conversion statistics easily reveal the deficiencies of reliance on a differential assessment program. In Baltimore County, the planning office kept a record of the number of subdivisions built on agricultural lands in the first four months after implementation of its original "agricultural zone" (20 lots/100 A) - the enormity of the agricultural land loss led to imposition of interim development controls which sharply limited development activity.

In areas subject to intensive development pressure, moratoria on development may be needed while an agricultural preservation program is being worked out. This is especially true when down-zoning is being considered, for a rush to get subdivisions platted will undoubtedly occur in the hopes that

such subdivisions will be grandfathered in.

3. Once the problem has been recognized, there must be institutional or individual acceptance of responsibility for addressing the problem.

In the initial stages of problem recognition, a "study committee" is often formed to collect data and formulate options for addressing the problem. This committee is frequently appointed by an elected official (as the governor-appointed State Committee on the Preservation of Agricultural Lands), but it need not be: the Howard County Work Force consisted of a self-selected group of farmers.

4. The institution or individual charged with addressing the problem must involve the whole array of interested parties (especially farmers), either as committee members or consultants.

Not all farmers are equally interested in working on programs to preserve agricultural lands. Identification of active, interested farmers who might play a leadership role in the farm community can be very useful, particularly if they agree to help design or at least promote the program. In both Howard and Baltimore Counties, young farmers provided the core of farmer interest for their programs. The agricultural extension agent can often identify farmers with a potential interest in agricultural land preservation.

5. Costs of data collection and program formulation can be greatly reduced by involving public agencies as committee members or consultants: their information and skills will thus be provided as in-kind services, charged to their budget rather than to the committee.

Howard County was particularly successful in this respect, for agencies represented as technical advisors included the state agricultural university, the local and state planning departments, the local office of finance, bond counsel, and fiscal advisor; and USDA agencies such as the SCS and the Agricultural Extension Service.

6. Another cost-cutting measure may be instituted by the identification and recruitment of local residents with valuable skills, perceptions, or contacts.

Howard County again proved astute here, for they actively recruited local residents who had federal or state govern-



mental positions to help them in program formulation and implementation.

7. The farmer's inherent suspicion of planners and government must be overcome if a useful coalition is to be formed or if regulatory measures are being considered.

The planning department must establish a good relationship with local farmers by providing them access to the planning staff in a stable, consistent way. Both Howard and Baltimore Counties have attempted to do this--Howard County by appointing an Agricultural Preservation Program Administrator on their planning staff, and Baltimore County by assigning planners to geographical areas of the County (their rural area planner has held that position since 1969).

8. When assessing different program options, it must be realized that local familiarity with a particular technique will enhance its acceptability. New and innovative techniques may appeal to planners, but they are unlikely to appeal to farmers and other residents.

A lot of experimentation with different approaches to farmland preservation is occurring throughout Maryland. If residents and policy-makers see that a program is working in a neighboring county, they will be more inclined to try it in their own jurisdiction. Many informal and formal networks exist for the exchange of information at the local level. (Examples: meetings of the Association of Counties, river basin commissions at which county officials are likely to talk informally and, volunteer fire company social events at which farmers are likely to exchange views). These networks should be utilized.

9. To satisfy legal requirements as well as developers' objections, a study should be undertaken to show the compatibility of the agricultural land preservation program with accommodation of anticipated regional growth.

Both Howard and Baltimore Counties set goals for acres of agricultural land to be preserved, and then analyzed the potential of the remaining land for accommodating the projected population growth.

10. When different program options are being considered, the



political, economic, and social climate of the moment (and assumptions about the future) must be taken into account.

When restrictive zoning was first being proposed in Baltimore County, the region was in a growth boom, with population growth and development occurring at ever-increasing rates. Everyone felt that they could make a fortune by sub-dividing his land, and objections to agricultural zoning were strong and widespread. By the time restrictive zoning had been accepted, a mild recession was firmly in place and development activity had virtually halted. The technique had not changed, but the economic climate had.

11. The support of the key politician in the relevant jurisdiction is critical to the success of any program.

At the local level, the County Executive has the power to make or break an agricultural land program through his political and budgetary powers. In Howard County, the support of the County Executive was carefully cultivated, and he responded by including the agricultural planner in the budget and by writing personal letters to individual farmers urging their participation in districts.

The support of a state political leader can also be key: witness the power of Governor Byrne in New Jersey with regard to the million-acre Pine Barrens program, or Governor McCall in Oregon in the 1970's.

12. Once a program has been formulated roughly, it should be tested for acceptability with various interested parties. This should not occur at a large public meeting, but should precede the first formal public presentation of the proposed program.

In Walworth County, Wisconsin, the first draft of a proposed ordinance was discussed at over 500 local meetings, revised, and presented again. Once individual comments and criticisms are made known, the program can be altered to accommodate them or arguments can be formulated to refute them in an informed, positive way. Furthermore, by presenting the plan at small meetings of relatively homogeneous individuals, the presentation can be tailored to the audience: urban residents will be more likely to respond to an open space/environmental protection argument, while farmers can be presented a program in light

of its protection of their agricultural interests.

13. Once instituted, a program should be subject to periodic review to allow flexibility in dealing with changing circumstances.

This is especially true for a comprehensive growth management plan such as Baltimore County's, and they have made provision for this by requiring a semi-annual report on the program's effectiveness and consistency with other county policies and programs.

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55. A review of RC-5 subdivisions submitted under the revised ordinance indicates an average lot size of 2.92 acres on tracts over 15 acres and 1.65 acres on tracts under 15 acres. Although the sample is small, it does appear that the fears expressed were unfounded. (Letter from John J. Dillon, Jr., Environmental Planner, Baltimore County, July 29, 1980).
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57. Interview with Mr. Richard Moore, rural area developer in Baltimore County, March 24, 1980.
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## Case Study No. 16

### OREGON: STATE STANDARDS AND LOCAL PLANNING AND REGULATION

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OREGON: STATE STANDARDS AND LOCAL PLANNING AND REGULATION

By

Robert E. Coughlin

I. INTRODUCTION

The state of Oregon has probably the most comprehensive program yet enacted for the preservation of agricultural land. Like many other programs, it relies on agricultural zoning as the immediate tool for preventing development of good quality soils. But whereas in most states, the exclusive agricultural zoning ordinance is the only measure used, and is applied at local option, in Oregon the local zoning ordinance is but one element in an integrated set of statutorily required policies and programs.

The major elements in the Oregon program are:

Explicit legislation. The Oregon Land Use Act of 1973 (SB 100, later codified as ORS 197) set up the Land Conservation and Development Commission (LCDC) and charged it with developing and adopting "state-wide planning goals and guidelines for use by state agencies, cities, counties, and special districts in preparing, adopting, revising, and implementing existing and future comprehensive plans"(ORS 197.225). The Commission was also instructed to give priority consideration to agricultural land along with 11 other types of environmentally sensitive lands.

The legislation also requires each city and county to prepare and adopt comprehensive plans consistent with statewide planning goals approved by the commission; and enact zoning, subdivision and other ordinances or regulations to implement their comprehensive plans.

Adopted Policy. LCDC has adopted 19 mandatory



Goals and accompanying Guidelines, which explain and amplify the Goals. In addition, LCDC has adopted a number of Administrative Rules, which also have the force of law, as well as other explanatory statements (issued under the general title "Common Questions about ..."). The two Goals of most interest here, and probably the two most important Goals, are those concerned with Agricultural Lands (Goal 3) and Urbanization (Goal 14).

Concern with farming, not just farmland. The Oregon program combines incentives with restrictions on land use. While mandating the use of exclusive agricultural zoning, the program also provides for a number of protections and tax incentives for the farmer. Thus, the program attempts to assure a number of the conditions necessary for economically successful farming.

Clear levels of responsibility. All planning and zoning is a local responsibility, but must be carried out within the statewide Goals and Guidelines whose enunciation and enforcement are the responsibility of LCDC.

Political Support. The Land Use Act has survived two statewide referenda, and in fact the successive votes indicate a continuing strengthening of support.

A Sympathetic Court. Decisions of Oregon courts have generally strengthened the agricultural protection program of LCDC.

A Strong Public Interest Organization. Through aggressive and successful court actions in defense of the Oregon Land Use Act and the Goals and Guidelines, 1000 Friends of Oregon has become an important factor in the land use planning process. Government officials are keenly aware that unless they hew closely to the intent of the Land Use Act, 1000 Friends is likely to challenge them in court, and, based on past performance, is likely to win the case.

Thus the comprehensive nature of the 1973 Land Use Act, the clarity of the subsequent goals and guidelines, especially in relation to prime lands and to the location of urban growth, the state's statutory provisions for exclusive agricultural zoning which also provide for incentives to strengthen agriculture, several favorable court decisions, and a strong public interest organization provide a mutually reinforcing framework for Oregon's efforts to preserve farmland.

Even such a strong program, however, has not been able to attain its goals quickly, and although the program appears to have general political support, opposition continues, especially to specific decisions on the lands to be included in protective agricultural and forestry zones and on the location of urban growth boundaries.

## II. THE GEOGRAPHIC SETTING

Generally, Oregon may be divided into two regions, a moist region between the Pacific Ocean and the Cascade Mountains, and a semi-arid region to the east (Figure 16-1). Both the most productive farmland and the majority of the population are found in the western region, especially in the Willamette Valley, which is bounded by the Coastal Range and the Cascade Range and which contains all of Oregon's largest cities: Portland, Eugene, and Salem. There are no major cities in the eastern region.

The state's economy is strongly resource based, with commercial forested lands accounting for 11,000,000 acres (40 percent) tilled lands 5,000,000 acres (19 percent), and range land 9,600,000 acres (36 percent).<sup>1</sup>

Population of the State has grown from 1,768,700 in 1960 to an estimated 2,443,800 in 1978; a 10-year growth rate of 18 percent during the 1960s and 21 percent during the 1970s. Even by 1978, however, population density had reached a total of only 54 persons per square mile of non-federally owned land. In comparison with the State of Pennsylvania, for example, with 268 per square mile, Oregon's population density is minute. Figure 16-2 shows population density by county.

About 68 percent of the state's population, however, is located in the nine counties which contain the Willamette Valley. Population density of these counties had reached 126 persons per square mile by 1978, while that of the rest of the state was only 10 persons per square mile (see Table 16-1).

Of the five million acres in the Valley, three million comprise the generally flat and open valley floor; the remaining two million are forested slopes.

Although the counties containing the Willamette Valley account for only 13.7 percent of all of the land in the state, the Valley contains 29.8 percent of all of the state's Class I-IV land, as can be seen from Table 16-2. It is especially well endowed with Class I land (49.5 percent of the State's total) and Class II land (34.0 percent of the State's total). Although Class I and II soils tend to be located on the valley floor and Class III and IV soils on the foothills, many farms are laced with seams of Class III and IV soil through larger bands of Classes I and II. Many Class III and IV soils are enormously productive. For example the onion crops on the Class IV Semiahoo-Labish series near Salem yield more dollars per acre than any



FIGURE 16-1  
PHYSIOGRAPHIC REGIONS OF OREGON

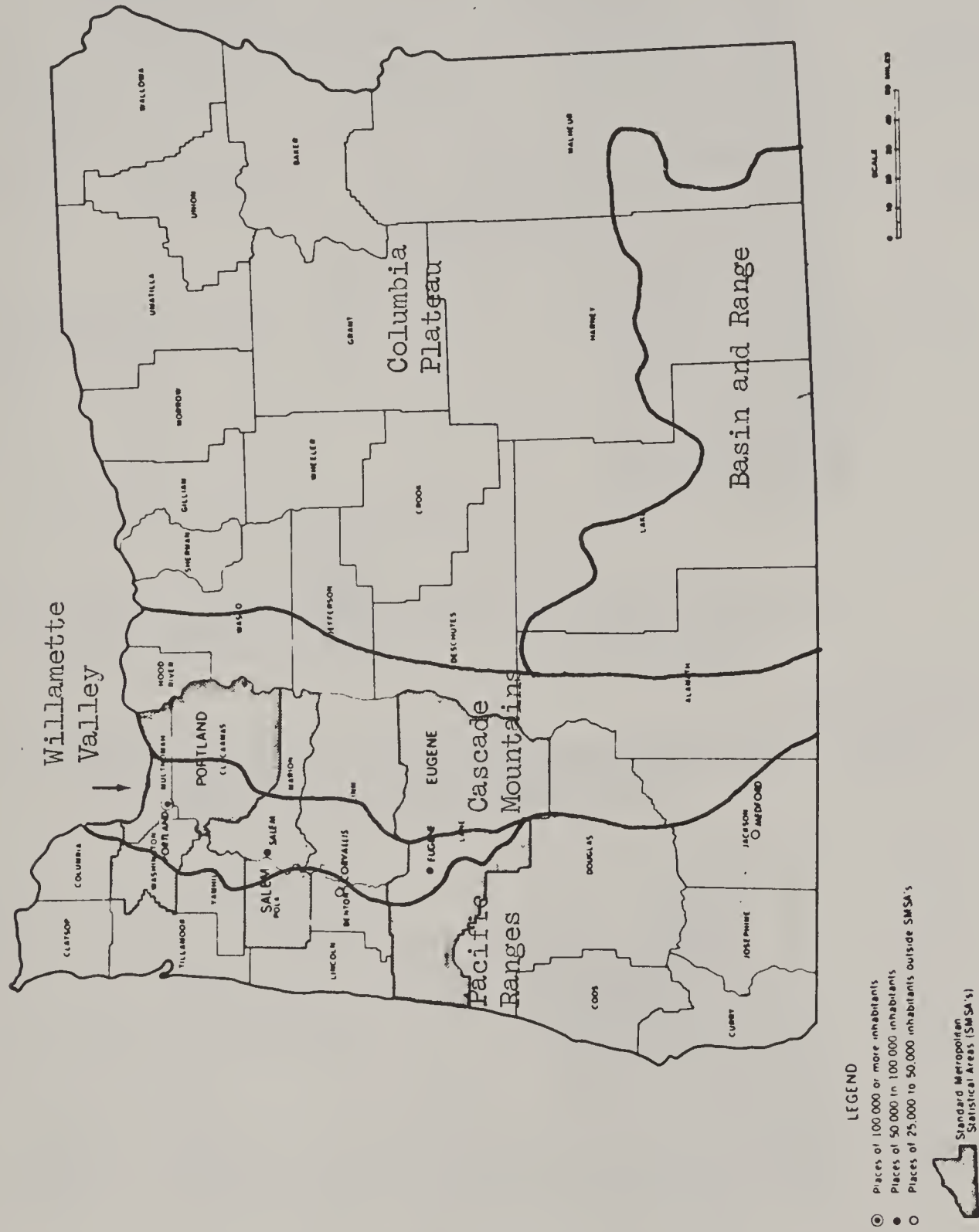
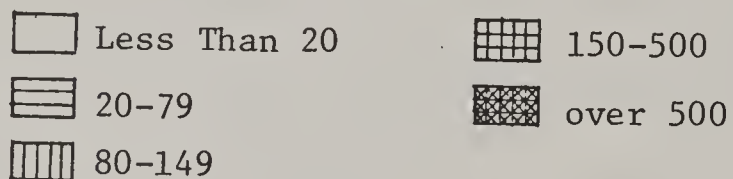
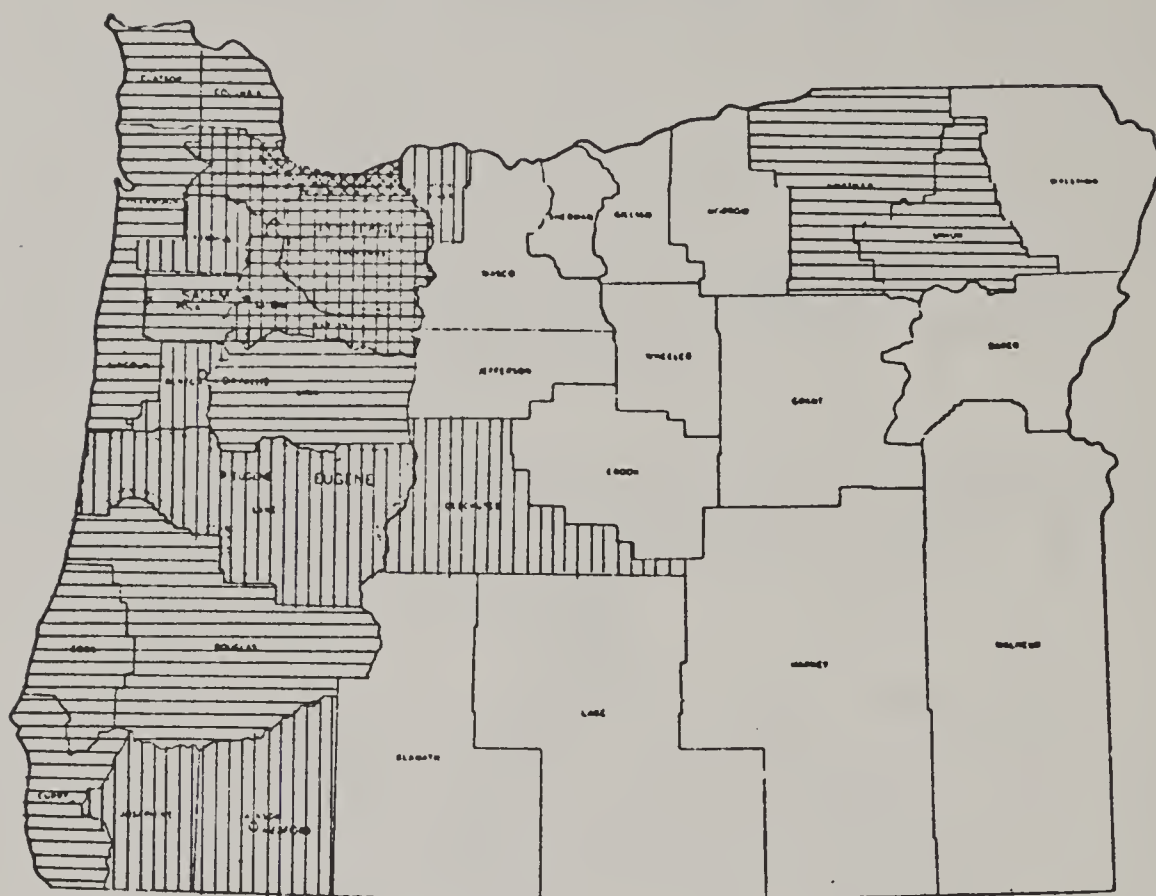


Figure 16-2

POPULATION DENSITY OF OREGON COUNTIES

A. POPULATION PER SQUARE MILE, 1980



B. ABSOLUTE INCREASE IN POPULATION PER SQUARE MILE, 1970-1980

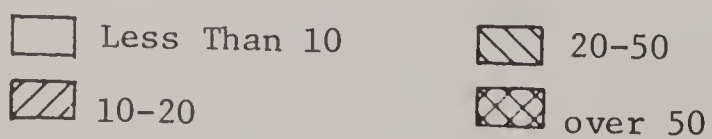
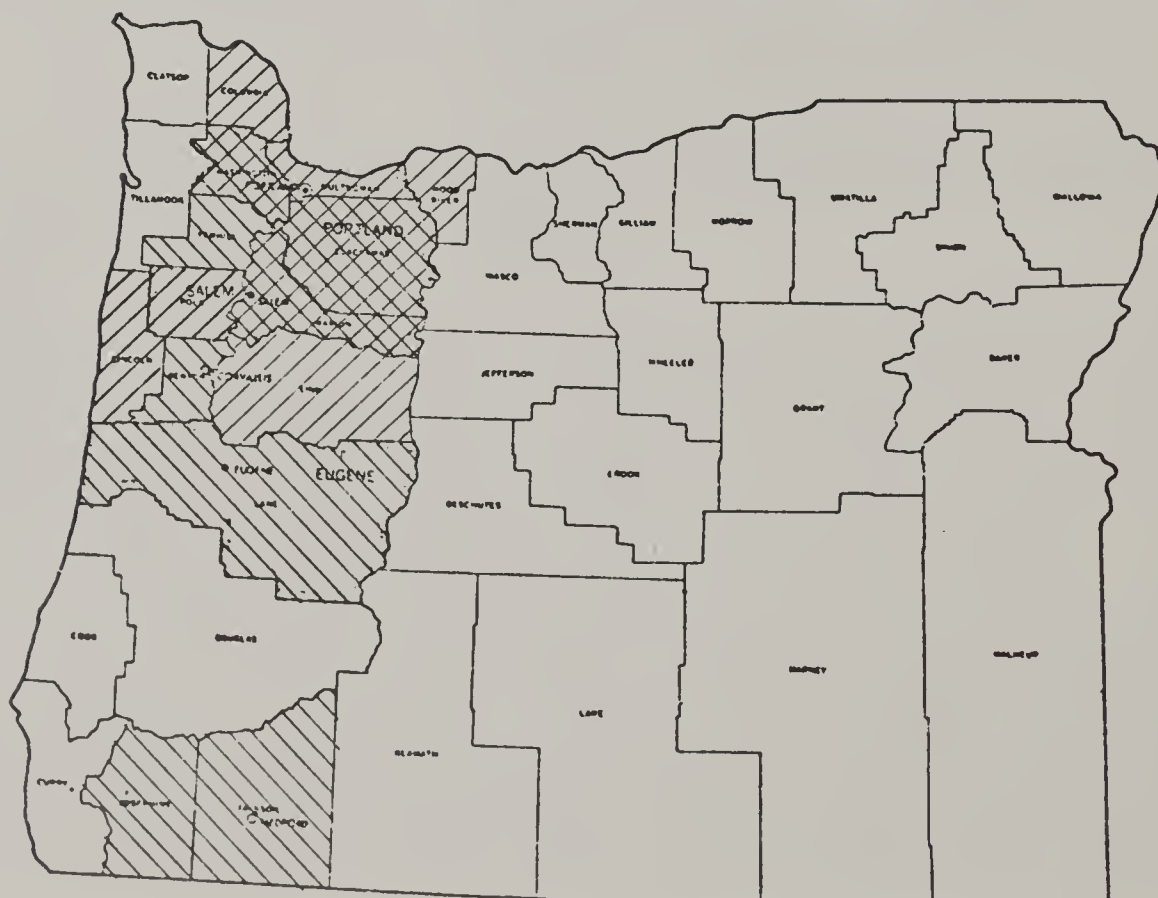


Table 16-1

POPULATION IN THE WILLAMETTE VALLEY AND IN THE REST OF THE  
STATE OF OREGON

	<u>Willamette Valley Counties*</u>				<u>Remainder of State</u>	
	<u>Population</u>	<u>Increase in 10 yrs</u>		<u>Pop'n per Sq. mi.</u>	<u>Popu- lation</u>	<u>Population per sq. mi.</u>
		<u>Amount</u>	<u>Percent</u>			
1960	1,168,899	----	-----	89	599,788	7
1970	1,446,624	277,725	23.8	110	644,761	8
1978	1,653,420	258,495	17.9	126	790,419	10

\* Benton, Clackamas, Lane, Linn, Marion, Multnomah, Polk, Washington, and Yamhill.

Table 16-2

ACREAGE OF LAND BY SCS SOIL CLASS IN THE WILLAMETTE  
VALLEY AND IN THE STATE OF OREGON

<u>Land by SCS Class</u>	<u>Willamette Va.*</u>	<u>Oregon Total**</u>	<u>% of Total in Willamette Valley</u>
Class I	95,997	194,004	49.5
Class II	867,393	2,538,633	34.0
Class III	906,267	3,621,171	25.0
Class IV	860,016	2,782,336	30.9
Total I-IV	2,729,673	9,136,144	29.8
All Land	8,408,960	61,557,760	13.7

\* Compiled by RSRI. Number for Willamette Valley is for total area of counties containing the Willamette Valley.

\*\* Compiled by Department of Land Conservation and Development from Oregon Soil and Water Conservation Needs Inventory, Soil Conservation Service, 1971. (1967 data).



other soil type in the state of Oregon. Similarly, cranberry bogs and the Class IV Dayton type soils which produce grass seed are highly productive soils. For these reasons, the framers of the 1974 legislation, about to be discussed, intentionally dropped the term "prime farmlands" and replaced it with "agricultural lands."

Development pressure on the Valley and its lush farmland was the main concern which roused the citizens of Oregon to do something to protect all of the state's farmland from development. Development in the Valley is painfully obvious... "in the Valley, the land is finite. When somebody sells off 160 acres for development, it really means something, its a real loss."<sup>2</sup>

### III. LEGISLATIVE HISTORY

#### A. Earlier Land Use Legislation<sup>3</sup>

In 1961, a bill was enacted by the state legislature which provided for the assessment at farm use value of tracts of five acres or more which were zoned exclusively for farm use.<sup>4</sup> This statute, known as the "Greenbelt Law", introduced the concept of exclusive farm use zoning, and also the idea of tying a benefit to it. The law, however, was used only in the Eola Hills district in Polk County before being repealed and replaced by a new law in 1963<sup>5</sup> which made it possible to apply differential assessment to unzoned land as well as to land within farm-use zones.<sup>6</sup>

In 1973, additional important changes were made to the differential assessment law. The sanctions now specified are among the strongest imposed by any of the 42 states with differential assessment laws.<sup>7</sup> Rollback penalties of up to 10 years are levied when enrolled land becomes ineligible for differential assessment through the actions of the owner. For unzoned land, an additional interest charge of 6 percent per year is levied, and if the owner fails to notify the assessor of a change in use, the penalty is 20 percent.

Before 1973, Oregon had passed a number of laws which reflected its sensitivity to the environment. Among these were the Clean Water Act, which required a permit before any discharges are made; the bottle bill, which made Oregon the first state to require a minimum deposit on beverage containers and to ban pulltabs; the bicycle law, which set aside a mandatory percentage of highway revenues for bikepaths; the bonds-for-pollution abatement facilities bill; a beach bill, which declares that beaches belong to the public up to the "line of vegetation"; and a billboard removal law. An initial statute to establish a greenway along the Willamette River was passed in 1967, and specific legislation was adopted in 1973. The Oregon Coastal Conservation and Development Commission was created by the legislature in 1971. The Commission was directly responsible to the state legislature, not to the local coastal communities.

The first direct and statewide response to the need to protect agricultural land was Senate Bill 10, passed in 1969. The Bill requires cities and counties to zone their land and begin work on comprehensive plans. If satisfactory progress had not been made by December 1971, the governor was empowered to step in. The Bill was deficient, however, in that it lacked

standards for evaluating the comprehensive plans and a method to coordinate plans between contiguous localities. Through it, however, many local jurisdictions became well acquainted with zoning before exclusive farm use zoning was mandated in 1973.

B. The Adoption of the Oregon Land Use Act (Bill 100)

As the 1970s began there was a strong enthusiasm throughout the county to protect the natural environment from destruction by urban and industrial development. In Oregon, Governor Tom McCall created a mood in favor of environmental protection and agricultural land retention by orchestrating a massive public relations and public involvement campaign in the year (1972) preceding the convening of the legislature. He made it clear to every member of the legislature that he would bleed and die for the proposed land use program above anything else.<sup>8</sup>

The sponsor of Bill 100, Hector MacPherson, a republican dairy farmer and former county planning commission chairman from Linn County in the Willamette Valley, was elected to the Oregon Senate in 1971. He soon set up a citizen's "Land Use Policy Action Group" made up of economists, specialists in agriculture, local government planners, businessmen, and environmentalists. The Action Group was organized into two sections to study the issues of statewide planning and the protection of rural land. Within several months, the two committees had come up with the basic ideas that eventually led to Act 100.

The Policy Action Group held public hearings and had drafted the first version of Senate Bill 100 by December 1972. The draft bill called for establishing 14 planning districts to undertake the planning process and to make sure that plans conformed to legislative intention and that plans were integrated from one community to another. To oversee and enforce the process, a Department of Land Conservation and Development (DLCD) was to be set up together with a Land Conservation and Development Commission (LCDC) made up of citizen appointees designated by the Governor and confirmed by the Senate. In addition, there would be an oversight group comprised of members of both House and Senate, called the Joint Legislative Committee on Land Use. Finally, the Governor was to be given the power to step in and prescribe or revise plans for local jurisdictions.

The LCDC was to prepare goals and guidelines within one



year in order to provide objective standards for judging the plans.

In addition to these procedural arrangements, specific "areas and activities of state concern" were identified. Permit authority, lodged at the state level, was to be directed to particular kinds of land as well as to specific geographical areas. The kinds of land were to include land connected to or adjacent to designated scenic waterways and wild and scenic rivers; land within one-quarter mile of local, state, and federal parks, recreation areas, and primitive or wilderness areas; land within one-half mile of interstate highway interchanges in unincorporated areas, and land next to designated "scenic highways." Specific geographic areas for which state development permits were to be required included coastal areas. Activities of state concern were to include construction of airports, state and federal highways, mass transit systems, solid waste disposal sites and facilities, nuclear and thermal power plants, transmission lines for gas, oil or electricity, and sewerage systems and water supply systems.

The Senate Environmental and Land Use Committee, chaired by Senator Ted Hallock, immediately held hearings at which much opposition was voiced. Despite strong support from Governor McCall, a large percentage of local officials, many state agencies, most newspapers, and all environmentalists, and despite the fact that the powerful economic interests of the state--developers, industry, loggers, farmers, tourism groups--had not in any organized way come out unequivocally against the bill as a whole, it was clear that the bill was not likely to pass.

There were two major problems. First, the 14 planning districts called for by the bill, which would operate as Councils of Governments (COGs), suggested an "unlocal decision-making process undertaken by unelected officials operating through an uneconomic third layer of government" (to use Charles E. Little's words). Second, state review of specific "areas of state concern"--primarily coastal areas--was strongly opposed by representatives of those areas.

It was decided to redraft the bill. To do this another ad-hoc committee was appointed by Committee Chairman Hallock and Senator MacPherson. They hoped to put all the lobbyists for various points of view in one room to see just what they could agree upon before any irretrievable positions were taken. Included were representatives of lumbering interests,

manufacturing, agriculture, home building, county government, city government, and environmental organizations. The appointed chairman was L.B. Day, an official of the Teamster's Union who was former Director of the state's Department of Environmental Quality.<sup>9</sup> Day had a reputation of being neutral--but those who disagreed with him tended to see him as either a fair-minded administrator or a dedicated environmentalist. Within 10 days a new draft emerged from the Committee.

The bill now put the responsibility for planning and planning coordination in the hands of cities and counties instead of in regional planning districts. It deleted "areas of critical state concern," but provided that in developing goals and guidelines, the LCDC could propose these areas to the state legislature as they logically emerged. "Activities of state concern," however, were retained in the bill. The back-up function of the Governor was eliminated, and LCDC was designated the enforcer of the planning process. One important element was added to the bill: a requirement for public participation in plan making. Counties would have 90 days to submit plans for citizen participation, including the appointment of citizen advisory committees to work with officials in preparing the comprehensive plans.

When the new bill was introduced, it was still opposed by representatives of Oregon cities, who saw rural county officials sitting in judgment on their actions, and by utilities. The bill was amended to give cities, for the purpose of SB 100, the status of a "county" and to drop power plants from the "activities of state concern."

SB 100 was passed by the Senate 18 to 10 (with 2 absences) and then by the House 40 to 20 with no changes. The number of votes cast were distributed as follows:

	<u>In Favor of SB 100</u>	<u>Opposed to SB 100</u>
Senate	18	10
House	<u>40</u>	<u>20</u>
	58	30
Democrats	37	13
Republicans	<u>21</u>	<u>17</u>
	58	30
Willamette Valley	49	9
Rest of State	<u>9</u>	<u>21</u>
	58	30



#### IV. GOALS AND GUIDELINES AND OTHER LEGISLATIVE MANDATES

##### A. Goals and Guidelines

LCDC, following its charge, adopted 14 Goals and accompanying Guidelines in December 1974. Two years later five additional goals were adopted for coastal areas.

Although planning and zoning are to be carried out at the local level, cities, counties, and special districts must use the LCDC Goals and Guidelines in preparing, adopting, revising and implementing comprehensive plans<sup>10</sup> and LCDC has review authority over local plans. State agencies also must comply with the Goals when they undertake planning responsibility or authorize actions (such as granting permits or authorizing funds for sewer interceptors) that affect land use (ORS 197.80). "Comprehensive Plans and any ordinances or regulations implementing this plan, are to comply with the statewide goals by January 1, 1976. The goals are intended to carry the full force of authority of the state to achieve the purposes ... of the act. Goals are regulations and the basis for all land use decisions relating to that goal subject. Guidelines, on the other hand, are suggested directions that would aid local governments in activating the mandated goals. They are intended to be instructive, directional and positive, but not limiting local governments to a single course of action when some other course would achieve the same result ..." Amendments to the law adopted in 1977 define the goals as "mandatory statewide planning standards adopted by the Commission" (Sect 197.015(7)), and guidelines as "suggested approaches" to comply with the statewide goals through the adoption and implementation of city and county comprehensive plans and through the adoption and implementation of "plans, programs, and regulations by state agencies and special districts" (Sect. 197.015(8)).

The goals concerning agricultural lands (Goal 3), Urbanization (Goal 14), and Housing (Goal 10) are of particular interest. Goal 3 is "To preserve and maintain agricultural lands" The agricultural lands goal goes on to state:

"Agricultural lands shall be preserved and maintained for farm use consistent with existing and future needs for agricultural products, forest and open space. These lands shall be inventoried and preserved by adopting exclusive farm use zones pursuant to ORS Chapter 215" (emphasis added). Agricultural land is defined as land of predominate



antly Class I, II, III, and IV soils, and in eastern Oregon Class V and VI soils in addition.

LCDC has taken the position that all Class I-IV soils which are not "committed to non-farm use by physical development must be zoned EFU", that is, for Exclusive Farm Use. The EFU zoning itself provides for standards for non-farm use if the applicant can show that the land is "unsuitable" for agriculture. The definition of agricultural lands has been extended to include other lands found suitable for farm use and grazing and adjacent lands in other soil classes necessary to permit neighboring farm operations.

The Agricultural Lands Goal finds precedent in a statement of Agricultural Land Use Policy which was adopted by the legislature in 1973 (ORS 215.243).

This policy states that "Open land for agricultural use is an efficient means of conserving natural resources that constitute an important physical, social, aesthetic, and economic asset to all the people of this state ... The preservation of a maximum amount of the limited supply of agricultural land is necessary to the conservation of the state's economic resources and the preservation of such land in large blocks is necessary in maintaining the agricultural economy of the state and for the assurance of adequate, healthful and nutritious food for the people of the state and nation."

In addition, it is stated that "Expansion of urban development into rural areas is a matter of public concern because of unnecessary increases in costs of community services, conflicts between farm and urban activities and the loss of open space and natural beauty around urban centers ... Exclusive farm use zoning ... substantially limits alternatives to the use of rural land ... and justifies incentives and privileges offered to encourage owners of rural lands to hold such lands in exclusive farm use zones."

Goal 14 is "To provide for an orderly and efficient transition from rural to urban land use."

The urbanization goal then elaborates:

"Urban growth boundaries shall be established to identify and separate urbanizable land from rural land. (emphasis added).

The Urbanization Goal is complemented by the Housing

Goal and the Public Facilities and Service Goal which help to expedite the development of housing within the Urban Growth Boundary and to make it more difficult outside. The Housing Goal (Goal 10) is "To provide for the housing needs of citizens of the state ... plans shall encourage the availability of adequate numbers of housing units at price ranges and rent levels which are commensurate with the financial capabilities of Oregon households and allow for flexibility of housing location, type, and density." The Public Facilities and Services Goal (Goal 11) is "To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development." The accompanying Guidelines state that "public facilities in urban areas should be provided at levels necessary and suitable for urban uses ... (but in rural areas) ... should be provided at levels appropriate for rural use only and should not support urban uses."

Two other goals should be noted. The Forest Lands Goal (Goal 4) states that "Forest land shall be retained for the production of wood fibre and other forest uses." Neither Goal nor Guidelines, however, specify how forest lands are to be retained, although the goals do list seven different types of forest uses including production of trees, soil protection, recreation, grazing, maintenance of clean air and water, open spaces, buffers from noise and visual separators of conflicting uses.

The goal concerning open spaces, scenic and historic areas, and natural resources (Goal 5), defines 11 different types of areas which are to be inventoried. It is not specific about how they are to be conserved, but it does state ... "Where no conflicting uses for natural resources have been identified, such resources shall be managed so as to protect their natural character. Where conflicting uses for natural resources have been identified, the economic, social, environmental and energy consequences of the conflicting uses shall be determined and programs developed to achieve the goal."

Essentially, the set of Goals divides all land into four categories:<sup>12</sup>

Inside the urban growth boundary:

- (1) Already urbanized land.
- (2) "Urbanizable" land.

Outside the urban growth boundary:



- (3) Agricultural, forest, and open space land, which is subject to the restrictions spelled out in the goals.
- (4) Other rural lands, which are suitable for sparse settlement, small farms, or acreage homesites with no or hardly any public services, and which are not suitable, necessary, or intended for urban use.

B. The Exclusive Farm Use Zone<sup>13</sup>

The Agricultural Lands Goal specifies that agricultural lands shall be preserved by adopting exclusive farm use zones pursuant to ORS Chapter 215. This chapter of the Oregon Code states that land within farm zones shall be used exclusively for farm use (EFU) except as specified. (ORS 215.203, 215.213). Non-farm uses permitted as of right in farm zones include: dwellings and other buildings customarily provided in conjunction with the farm use, schools, churches, utility facilities excluding commercial power generation facilities, and mining exploration. Additional uses may be established subject to approval of the county: commercial activities in conjunction with farm use, public or private parks, playgrounds, hunting or fishing preserves and campgrounds, golf courses, power generation plants, mines, and personal-use airports. Finally, single family dwellings not provided in conjunction with farm use may be established with the approval of the county only if the proposed dwelling is "compatible with farm uses ... does not interfere seriously with farm practices, ... does not materially alter the stability of the overall land use pattern of the area, ... and is situated upon generally unsuitable land for the production of farm crops."

In the exclusive farm use zone, any division of land into parcels less than 10 acres in size must be reviewed and approved or disapproved by the governing body of the county; division of land into larger tracts may be approved or disapproved by the governing body if it wished. (ORS 215.263).

This statute is complemented by Goal 3, which states that "such minimum lot sizes as are utilized for any farm use zones shall be appropriate for the continuation of the existing commercial agricultural enterprise within the area." Individual counties are required to study the nature and structure of agriculture within their boundaries and determine how large a



farm must be in order to constitute a commercially viable unit. They have adopted minimum lot sizes ranging between 20 and 100 acres depending on the type of farming. The Land Use Board of Appeals has recently affirmed the requirement of Goal 3 to mean that any new farm parcel proposed in an EFU zone must be sufficiently large to make possible the continuation of the commercial agriculture in the area.<sup>14</sup>

### C. Incentives for Agriculture

The restrictions of the exclusive farm use zone are accompanied by a number of incentives designed to improve the viability of farming.

Restrictive local ordinances which affect farm use zones are prohibited (ORS 215.253). Specifically prohibited are local laws or regulations which would restrict or regulate accepted farming practices because of noise, dust, odor, or other materials carried in the air.

Land zoned for exclusive farm use (EFU) is exempt from assessments and levies of sanitary and water supply districts (ORS 308.401) as long as the land remains in agricultural use (and is qualified for differential assessment).

Land zoned for exclusive agricultural use qualifies for differential assessment (ORS 308.345). Other land not in an EFU zone which has been devoted exclusively to agriculture for at least two years and generates a specified minimum farm income, however, is also qualified for differential assessment, as is open space land.<sup>15</sup> For these latter two categories, application must be made annually, while for land zoned EFU, the classification and differential zoning is automatic.

For state inheritance tax purposes, all land in EFU zones is valued at farm use value rather than at market value (ORS 118.155 and ORS 308.370 (1)).

### D. Urban Growth Boundaries and Urban Development

The urban growth boundaries are guides to growth which are adopted after technical studies and public hearings, and which may be amended in the future if public need is shown and if the standards for originally establishing the boundary are also considered. 1000 Friends of Oregon views them, rather than the agricultural lands goal, as Oregon's primary tool for dealing with the urban fringe problem.<sup>16</sup>

Goals 14 (Urbanization), Goal 10 (Housing), and Goal 11 (Public Facilities and Services) are interpreted in LCDC's memorandum of November 19, 1979, Common Questions on Urban Development Paper: The "Urban Growth Boundary" is to be drawn so that it will include an approximate 20-year supply of buildable land. Local government should assure that buildable lands sufficient to meet short-term (3-5 years) growth needs are serviceable. That is, for this land there must be plan policies or a capital improvement program identifying time and location of such capital facilities as sewer and water trunk lines, arterial streets, and fire and school facilities. In the long-term, land should not be considered buildable unless there is a commitment to serve it. When there is no longer enough land within the UGB to provide 3-5 times as much serviceable land as is needed in one year, the UGB should be amended. There is, however, no specified interval for reviewing and amending Growth Boundaries, nor is the scope of an acceptable amendment made explicit.

Goal 10 (Housing) requires that "plans shall encourage the availability of adequate numbers of housing units at price ranges and rent levels which are commensurate with the financial capabilities of Oregon households." LCDC's memorandum notes that "Local government cannot assure the availability of adequate numbers of housing units at each price or rent level. However, local government can encourage the availability of needed housing units through plans and ordinances which provide sufficient and suitable land, have a strategy for public facility provision, remove unnecessary costly building requirements and utilize a procedure which expedites permit approvals."

The UGB is a locally established line, based on state policy and adequate data. These elements make the boundary line politically acceptable and legally defensible. Because the UGB is part of a coordinated set of policies designed to facilitate growth within it and discourage it beyond it, it is expected to be an effective device for managing growth and does not appear to raise constitutional questions such as those raised in the Petaluma plan simply to stop or slow growth.<sup>17</sup>

#### E. Citizen Participation

The very first Goal is addressed to citizen involvement. Each jurisdiction is required to adopt and publicize a program for citizen involvement appropriate to the scale of the planning effort. LCDC has ruled that this means citizen

participation in all phases of the planning process, including the adoption of a comprehensive plan. Citizen advisory committees are specifically required and funding is provided. Independent citizen groups, which do not receive state funding, have also played an important part in the process of program effectuation. These will be discussed in Section VI-C.

A listing of statutory provisions related to the exclusive farm use zone and farm use assessment is given as Appendix A to this case study.



V. THE MECHANISM FOR ENFORCEMENT

LCDC is a citizen commission consisting of seven members appointed by the governor subject to the confirmation of the Senate. One commissioner must be chosen from each Congressional District; no more than two commissioners may be chosen from Multnomah County, within which Portland lies. The commissioners serve for four years and normally meet for a two-day session once per month. The commission directs the work of its staff, the Department of Land Conservation and Development, which functions as the state planning agency. The Department consists of about 35 professionals and supporting staff.

LCDC has the responsibility for determining whether the comprehensive plans, zoning and subdivision ordinances of counties and cities comply with the statewide Goals. When LCDC is satisfied that the Goals have been met, it grants a "compliance acknowledgement," which must include a clear statement of findings setting forth the basis for the approval or denial (ORS 197.250). If a county or city has a plan or ordinance which does not comply and is not making satisfactory progress toward compliance, LCDC may issue an "enforcement order which sets forth the nature of the non-compliance and the corrective action the jurisdiction must take (ORS 197.320). Enforcement orders are administrative orders imposed after a public hearing and are subject to judicial review. LCDC may also require compliance of state agencies or special districts.

In addition to its authority over local governments, LCDC has responsibilities concerning activities of statewide significance and activities on federal land. No project constituting an activity of statewide significance (eg. public schools, transportation facilities, sewer, water, and solid waste disposal facilities) may be undertaken without a planning and siting permit from LCDC according to ORS 197.400. (Although that section and ORS 197.040 (2)(b) authorizes LCDC to designate and require permits for some or all of the listed activities, LCDC has not acted under those sections. Consequently there are no activities of statewide significance in Oregon).<sup>18</sup>

Any activities "affecting land use planning which the state may regulate or control in any degree" which occur on federal land cannot be undertaken without a permit issued by LCDC.

Appeals from LCDC orders have been made through the or-

dinary Oregon court system up until recently. On November 1, 1979, the Legislature enacted SB 435 and established the Land Use Board of Appeals (LUBA), a three member panel of judges appointed by the Governor with approval of the Senate, which will hear all land use cases previously heard by the circuit courts and LCDC. "In cases involving potential Statewide Planning Goal violations, the Board will function as a hearings officer to LCDC. LCDC opinions on Goal violations will be binding on the Land Use Board. The Board's decisions, including those made by LCDC are reviewable by the Court of Appeals."<sup>19</sup> The hearing and appeal process under LUBA is compared with the previous process of Figure 16-3 .

Thus LUBA will replace LCDC as the primary hearing officer and will replace 36 trial courts throughout the state. Since it is made up of judges, it is likely that LUBA will accord more weight to legal precedent than has LCDC, a body made up of lay members. Hopefully, too, it will bring more knowledge and consistency to land use decisions than have the diverse trial courts.

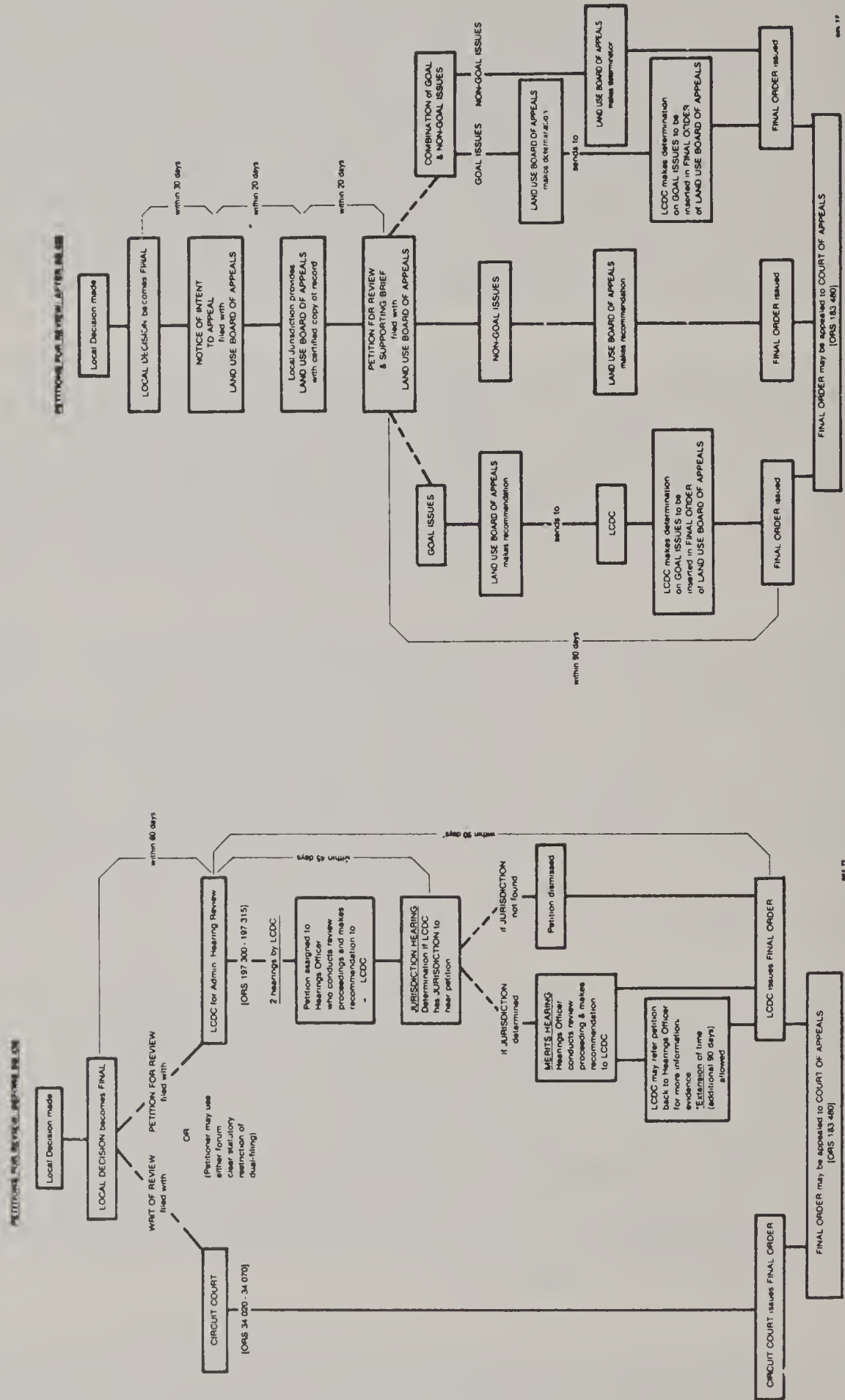
In order to interpret the requirements of the Goals, LCDC has issued a number of "administrative rules," which are adopted following a special procedure by LCDC and which have the force of law. In addition, it has also adopted other explanations which are promulgated under such titles as "Policies on...", "Common Questions About ...", and "Administrative Rules." All such current policy statements must be considered as precedents when the Commission rules on any particular set of facts which are brought before it.

The policy statements adopted were necessary to provide more specific direction than the Goals and Guidelines could provide. Their promulgation, however, generated some criticism from some local government officials, who felt that the policies changed the planning directives under which local governments were attempting to operate. Recently, LCDC appears to have avoided new policy statements in favor of relying on Acknowledgements and other responses to specific plans submitted to them for approval.

The issuance of a Compliance Acknowledgement by LCDC to a local jurisdiction is a significant act. It marks the end of the first phase of planning and regulating activity under the Land Use Planning Act. When a local plan is acknowledged to be "in compliance" with the Goals and Guidelines, it, rather than the Goals and Guidelines, becomes the primary authority. Once this occurs, LCDC's role will presumably be

Figure 16-3

THE PROCESS FOR LEGAL REVIEW





reduced, but as defender of the Goals and Guidelines it must be alert for any planning or development decisions which are inconsistent with the plan or any changes in the plan which are inconsistent with the Goals and Guidelines. There has been little experience with this second phase, since few jurisdictions have been acknowledged to be in compliance.

The process of obtaining Acknowledgement of Compliance typically begins with a local jurisdiction making a request for acknowledgement. If the submission is deemed incomplete (14 days are allowed for DLCD staff to determine completeness), the required material is requested by LCDC before formal Commission action. When DLCD determines that a request is complete, it mails a notice to federal, state, and local agencies and interested persons requesting their comments within 45 days. Comments received by that time are included in DLCD's report to LCDC. Agencies and interested persons may appear before the Commission at the hearing when it considers the request for acknowledgement. When the request is brought before the Commission, it is either acknowledged to be in compliance, or else the request is, "continued" and a date set for the receipt of necessary revisions to the plan. This is done through the issuance of a formal Continuance Order which specifies the conditions which must be met to achieve compliance and sets a date for a corrected submission. If the corrections are not submitted within the time specified, the Commission will deny the acknowledgement request and may issue an Enforcement Order pursuant to ORS 197.320. If the corrections are submitted but judged by LCDC not to comply with the Statewide Planning Goals, LCDC may deny the acknowledgment request, issue a continuance order, or issue an enforcement order. The continuance order may be accompanied by an enforcement order.

It was clear from the beginning of the program that planning efforts beyond the level attained at that time by most local jurisdictions would be required in order to develop plans which would meet the requirements of the Act. In order to enable cities and counties to undertake the necessary planning work, LCDC made planning grants totalling about \$16 million.

In order to help local jurisdictions in their efforts to obtain acknowledgement, LCDC employs seven Field Representatives and six other staff persons. In the first years of the program, city and county officials felt that the Field Representatives had too abstract a view of the problems of local planning and development. Over time, LCDC has filled a number

of its Field Representative positions with local planners. At least one Field Representative now has responsibility for the county of which he was once planning director. Greatly improved communication and understanding has resulted.

## VI. CHALLENGES TO THE PROGRAM

### A. Political Challenges

The program was not peacefully accepted by all following the adoption of SB 100 in 1973. In 1975 there was a major fight in the legislature over budget for LCDC. In 1977 legislative debate centered on proposed revisions to the statute, and in 1979 the legislature struggled over changing the Goals. Measures appeared on the statewide ballot in 1976 and 1978 calling for the repeal of SB 100. The program survived all these struggles, and undoubtedly is much the stronger for having demonstrated its continuing political support. Nevertheless, each of these attempts caused the program to slow down dramatically at both the LCDC and the local level.

The two statewide referenda are probably the most significant political events in the life of the program. Each time, a substantial majority of the voters favored retaining the program. The majority, in fact, increased from 57 percent on the first referendum to 62 percent on the second.

The first petition was filed in 1976 in part because of controversy concerning LCDC's role with regard to activities of statewide importance and the corresponding power vested in LCDC over local units of government. Statewide, 77.2 percent voted not to repeal, with the Willamette Valley counties voting 61.5 percent in favor of the program. All of the Valley Counties voted in favor of the program, with votes ranging from 54.0 percent in favor by Clackamas County to 74.3 percent in favor by Benton County.

Support for the bill was weak in the southern part of the state and along the Pacific Coast. Of the six coastal counties (excluding Lane, which is classified as a Willamette Valley county although it also reaches the coast) only one, Clatsop County, voted in favor of the bill. According to 1000 Friends<sup>20</sup> the negative vote in the southwest can be partly attributed to a bogus issue concerning the separation of powers. Those opposed to Senate Bill 100 claimed that it resulted in appointed officials exercising legislative, executive, and judicial powers all at once. Although there is truth to the charge, LCDC is no different from other major state commissions. They all have appointed members, all legislate in the form of regulations in administrative appeal proceedings.

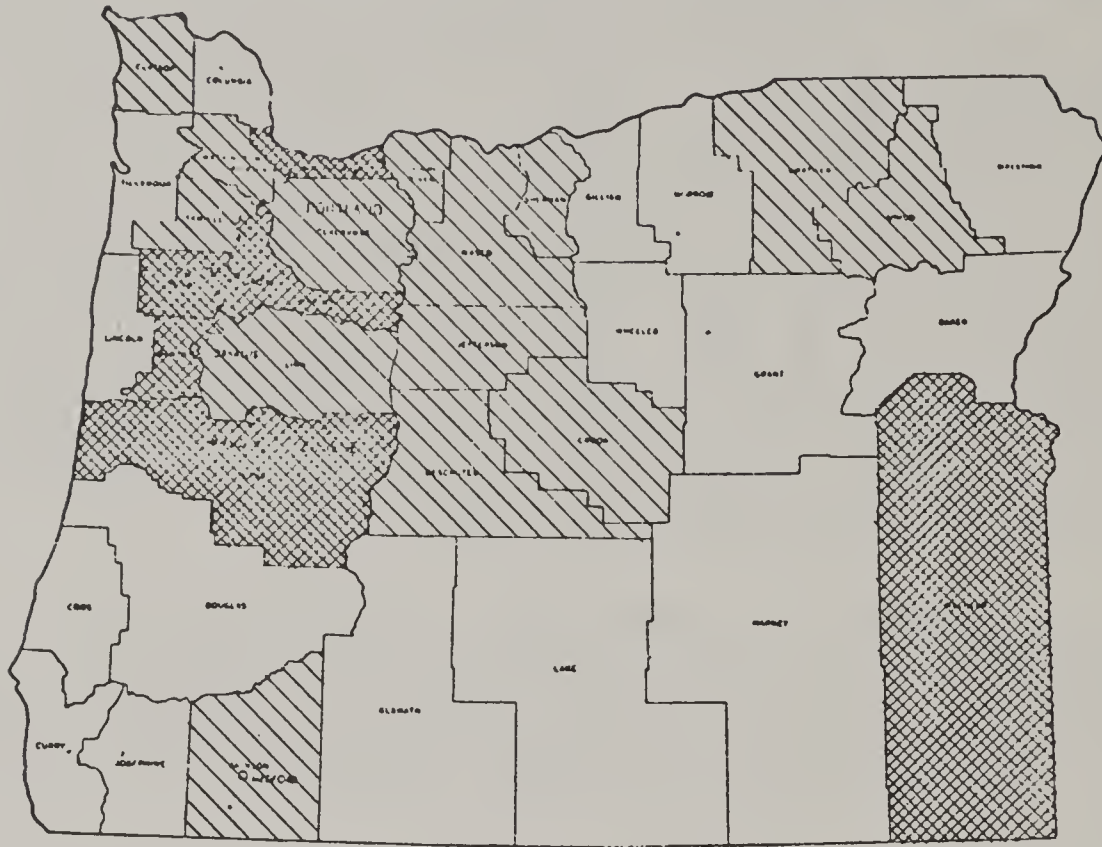
The vote on the 1978 referendum was even more favorable to the retention of Bill 100. Statewide, 60.5 percent voted



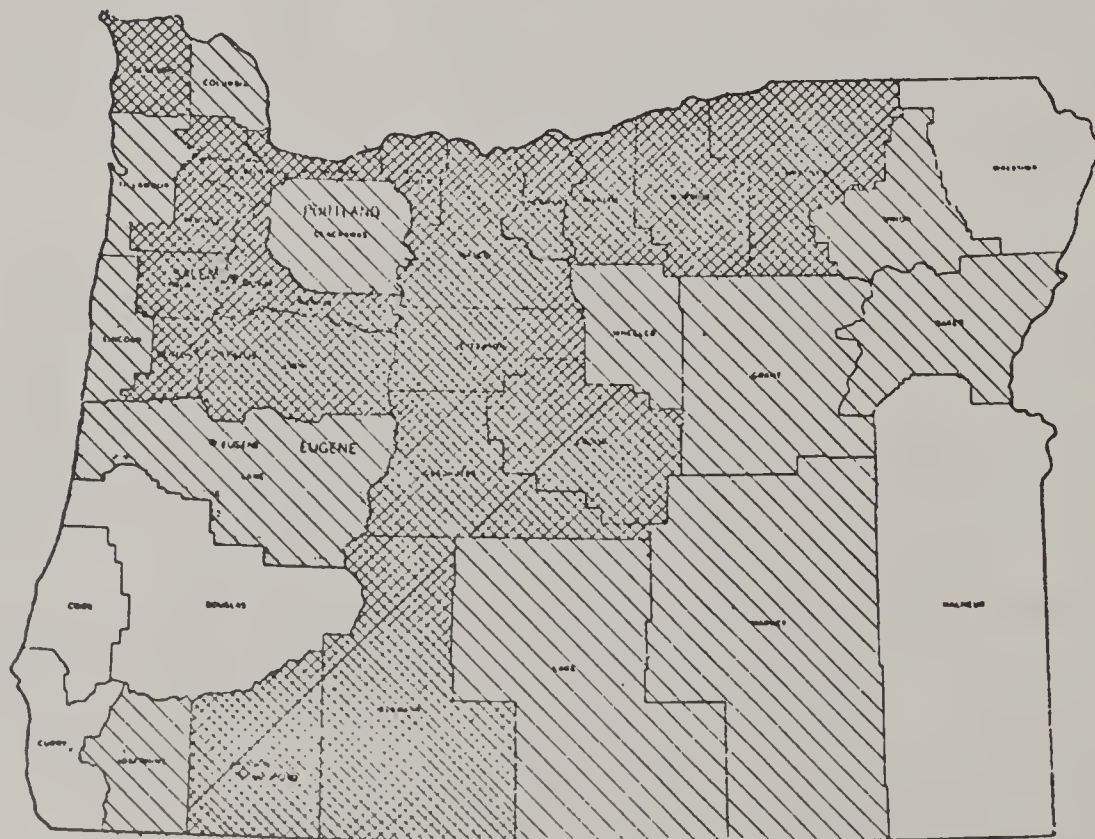
Figure 16-4

PERCENT IN FAVOR OF RETAINING SB100

A. VOTE ON THE NOVEMBER 1976 REFERENDUM:



B. VOTE ON THE NOVEMBER 1978 REFERENDUM



Percent in Favor

under 50

50-59.9

60 or over

to retain. In the Valley the vote rose to 63.5 percent and although the coastal counties once again failed to support the Bill, their total vote in its favor rose to 45.3 percent. Only the coastal counties of Coos, Curry, and Douglas, voted in favor of repealing Bill 100. In the remainder of the state, 58.8 percent of the vote favored retention. The vote on the two referenda is summarized in Table 16-3 and Figure 16-4.

These two referenda have provided a trial by fire for the LCDC program. Its success in surviving the attacks has significantly enhanced the stability of the program. At present there is no substantial plan for another referendum challenge to the bill itself.

Table 16-3

VOTE OPPOSED TO REPEAL OF BILL 100  
IN REFERENDA OF 1976 AND 1978

	<u>1976</u>	<u>1978</u>
Willamette Valley	61.5	63.5
Coastal Counties*	36.9	45.3
Remainder of State	<u>51.8</u>	<u>58.8</u>
State Total	57.2	60.5

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\*Note that Lane County is classified as a Willamette Valley county, not as a coastal county.

Despite the impressive vote favoring the LCDC program, opposition to it has not disappeared. Among the better known opponents are Jim Allison of Washington County who has been a persistent center of political opposition, and Mad Oregon Property Owners, Inc., headed by Roy E. Durham and Duane Griffith of Yamhill County. Perhaps the fact that the leaders of these groups both live in the foothills reflects the fact that there is general agreement on exclusive farm use zoning for the flat bottom lands which are predominantly Class I and II soils, and substantially less agreement on the agricultural value and desirability of zoning the land in the foothills, which tend to consist of Class III and Class IV primarily.

In the view of several observers, Jim Allison of Washing-



ton County has provided the most persistent opposition to the LCDC program. He was active in the referenda for appeal, and was instrumental in the passage of an ordinance by Washington County which requires a burdensome process of mailing notice to nearby property owners of any proposed change in plan or zone designation. In 1980 he worked for a ballot measure which would recognize every lot of record as a possible building site. The measure appeared only on the Washington County ballot and was passed by the county.<sup>22</sup>

A measure sponsored by a Douglas County commissioner to repeal Senate Bill 100 also failed to attract the necessary number of signatures and was not included on the ballot for November 1980. No statewide land use measure faced the voters in 1980.

### B. Legal Challenges

One striking characteristic of the Oregon program is the amount of legal action it has generated. It has been charged that the statute has encouraged "planning by litigation".<sup>21</sup> There have been some 150 contested cases. Monthly issues of Oregon Lands (The Newsletter of DLCD) typically list 6-12 "Appeals in Brief." Most cases are resolved by LCDC, but a substantial number have made their way through the state's court system. Major cases are listed in Appendix B.

A substantial body of Oregon case law--both administrative and judicial--concerning the protection of agricultural lands has developed. In a 1972 case (Multnomah County vs. Howell, 9 Or App 374, 496 P2d 235 (1972), Supreme Court review denied (1973)) Multnomah County was upheld in enjoining quarrying on land zoned residential-agricultural. In a second case (Joyce vs. City of Portland, 24 Or App 685, P2d (1976)) the court upheld a rezoning of over 800 acres from low density residential to farm and forest use. In both cases it was stated that there is no taking without compensation merely because there is a reduction in property value, so long as a substantial beneficial use remains. These cases are consistent with the opinion of the Joint Legislative Committee on Land Use that "so long as the most restrictive portions of local plans and zoning ordinances center around farm use designations for prime agricultural land, the beneficial use test will be complied with and the question of taking will not be successfully raised."<sup>23</sup>

More recently, cases have centered on the actions required by LCDC. On a general procedural level it has been found that counties must apply the requirements of the Agricultural Lands



Goal to a broad range of planning and development decisions. Specifically, Agricultural Goal requirements must be applied to "legislative" (large area, many owners) comprehensive plan amendments and zone changes (1000 Friends v. Marion County), to "quasi-judicial" (small area, single or few owners) zone changes (City of Sandy v. Clackamas County), and to actions such as subdivisions which affect land use (1000 Friends v. Benton County). The requirement to zone agricultural land exclusively for agricultural use was set forth clearly in the Opinion and Order resulting from 1000 Friends v. Marion County, (LCDC No. 75-006, March 2, 1977). The order rejected Marion County's proposal not to confer exclusive agricultural zoning on 11,600 acres of good agricultural land. Land suitable for agriculture, which is undeveloped and uncommitted to other uses, states the order, is "not to be viewed generally as space, available for development but as the basic resource upon which a major segment of Oregon's economy rests. As the nonreplacable foundation for crops and livestock, it is to be viewed as a primary source of its own rights. The purpose of this resource must be weighted carefully ... Thus, if acres for acreage homesites are determined to be needed in the Salem area, then all areas suitable for such sites must be considered including West Salem, even though it is in another county ... ORS 215.213 (3) is very clear that such homesites may be permitted in the EFU zones only under very strict conditions, so as to insure compatibility with the farm practices used in the exclusive farm use area and to keep the exclusive farm use area free from development."

The order states that agricultural land can be exempted from EFU zoning if the county can demonstrate through an "exception" that the land is already committed to non-farm use or is needed for non-farm use which cannot be located on non-agricultural land. Such exceptions must be supported by detailed findings set out in the comprehensive plan (Cook v. Clackamas County, LCDC No. 77-019, Opinion and Order, December 23, 1977 and 1000 Friends of Oregon v. Multnomah County, LCDC No. 77-031 Opinion and Final Order November 1979).

The definition of agricultural land must be applied to at least an entire ranch to determine whether the parcel is "predominantly" agricultural land (Meyer v. Lord, 37 Or App 59, November 6, 1978). In this case consideration of the characteristics only of a 70-acre portion of a 250 acre ranch was considered inadequate.

In addition, it has been found that the mere fact that a parcel of agricultural land is small (in this case, five acres)

is not itself evidence that the land is "unsuitable" for the production of crops and livestock if the parcel can be kept in production by means of a lease or sale to an adjacent farm. (Rutherford v. Armstrong (Yamhill County) 31 Or App 1319, 572 P2d 1331 (December 27, 1977 review denied (1978))). This decision is important because a substantial percentage of agricultural land in the Willamette Valley is in relatively small parcels and is under lease to farmers. The findings of the Rutherford case give farmers, who have a strong interest in maintaining a supply of land for rent or sale, a strong basis for opposing rezoning. In addition, if such parcels are excluded from the development market, they may become available for purchase at farm-use prices.

An owner has the burden of proving that the predominant soil classes on a property are other than agricultural land within the definition of the agricultural lands Goal, or that lot sizes created by a partition will be sufficient for the continuation of agricultural enterprises in the area or that the factors set out in the model zoning ordinance (ORS 215.213) relevant to permitting nonfarm uses on agricultural land are met (Jurgenson v. Union County (42 Or App 505, October 8, 1979)).

A 1979 opinion from the Court of Appeals (Still v. Marion County 42 Or App 115, September 17, 1979) points out that land is not to be excepted from the agricultural goal merely because somebody wants to buy it for a house. Market demand for rural residential development does not constitute a "need" for it.

One line of reasoning has been developed by the courts which has caused some confusion concerning the wording of Goal 3 that all Class I-IV land (and I-VI in eastern Oregon) must be zoned EFU. In 1000 Friends v. Benton County the court in a dictum noted that "Goal 3 does not mandate that all agricultural lands be preserved and maintained for farm use and eventually placed in exclusive farm use zones. The goal requires that such action be taken "consistent with existing needs for agricultural production, forestry, and open spaces." (1000 Friends v. Benton County, 32 Or App 413, 575 P2d 651 (1978), rev den, by opinion, 284 Or 41 (1978)). Such an interpretation would, of course, weaken the understanding that all Class I-IV land (in western Oregon) must be zoned EFU. The Benton County dictum was repeated in Meyer v. Lord, 37 Or App 59 (November 6, 1978) and in Hillcrest Vineyards v. Board of Commissioners of Douglas County March 17, 1980. However, while citing this opinion, the Court of Appeals goes on to say (Hillcrest Vineyards v. Board of Commissioners of



Douglas County) that "a finding that 'land cannot presently or in the foreseeable future be utilized for farm use as defined in ORS 215.203' must be based on substantial evidence" and judges that an error was made in not addressing possible farm applications other than grazing (specifically not considering the possibility of raising grapes).

Because of the structure of the court system (Figure 16-3) LCDC has never had an opportunity to confront this interpretation of the Agricultural Lands Goal, although they have entered briefs. Such an opportunity is likely to arise under the newly established system involving the Land Use Board of Appeals. Under the new system, LUBA is required by statute to submit Goal issues to LCDC for a determination which is binding on LUBA's determination. Previous actions of LCDC (such as its position in 1000 Friends of Oregon v. Marion County, discussed above, that all Class I-IV soils which are not "committed to non-farm use" by physical development must be zoned EFU) suggest that LCDC will dispose of the Benton-Meyer-Hillcrest dicta when the time comes.

A recent Oregon Court of Appeals case, Miles v. Board of Commissioners of Clackamas County, 48 Or App 951, \_\_\_ P2d \_\_\_ (1980) also suggests a turning from the Benton-Meyer-Hillcrest dicta. In reversing the county's approval of a subdivision development proposal, the court rejected the contention of the developers that "not all agricultural land is automatically zoned for exclusive farm use," and said that Goal 3 "requires that land suitable for farm use zoning be preserved and maintained for farm use until such time as they have been inventoried and zoned in accordance with the goals".

The Benton-Meyer-Hillcrest interpretation has arisen in the context of subdivision approvals by local governments which may be appealed to the circuit court and then to the Court of Appeals. It has not affected the approval of area-wide plans on which LCDC rules directly and, in fact, did not affect the outcomes of the three cases which generated the interpretation as asides to their findings.

Some flexibility has been introduced into the idea of minimum lot size by the Supreme Court (Meeker v. Clatsop County, 287 Or 665, October 30, 1979), when it affirmed a subdivision of an 82-acre tract into six tracts of from 10 to 20 acres for small farms. The Court agreed with the County Board of Commissioners that the 80-acre tract was marginal agricultural land that cannot be profitable, that even larger farms in the area were not economical to operate, that most



farming operations in the area were on small farms of 10 to 20 acres in size, and that greater agricultural utilization would result from breaking the undivided parcel into small farms of that size. The court pointed out, however, that rather than constituting a radical new interpretation of Goal 3, that "the requirements of Goal 3 are satisfied under the facts of this case, which we believe to be unique."

In summary, case law has generally supported the Goals and the LCDC program. A large number of issues related to the agricultural preservation program have been established through the courts. The existence of this substantial body of legal precedent should serve to expedite the planning and acknowledgement process in the future.

### C. Supportive Organizations

As can be seen from the legal cases cited above, 1000 Friends of Oregon has done much to set the legal climate in which the program has developed. They have either instigated or joined in a large percentage of the suits, and have been involved in almost all the significant ones.

1000 Friends of Oregon was formed in February 1975, "to implement Oregon's land use laws at the state and local level"... and specifically to see that "The Land Conservation and Development Commission (LCDC) properly implements Senate Bill 100 ... and that counties and cities implement LCDC's Goals." Governor Tom McCall was instrumental in its founding and is now Chairman of the Advisory Board. The staff of 1000 Friends consists of four lawyers and support staff (an administrator, a receptionist, a legal secretary, a membership secretary, and a part-time accountant. For a period in the past, when outside funding was available from CETA, a planner was on the staff. The organization is supported by its 2000 members and contributors (51 percent), grants (44 percent), and by Newsletter subscriptions and miscellaneous (5 percent). As funding from the Ford Foundation is being cut back, 1000 Friends is beginning a campaign to increase its membership.

The main thrust of 1000 Friends is in the adversary mode of legal action, but it also carries out a major educational function. Its newsletter, once published monthly, is now issued quarterly.

1000 Friends has concentrated its efforts exclusively on the Land Use Planning Act and LCDC's program. Other citizen groups such as the League of Women Voters and environmental

organizations have joined forces when the program was threatened by referenda initiatives or other crises.

1000 Friends has realized the vital connection between the Agricultural Lands Goal on the one hand and the Urbanization and Housing Goals on the other and has actively supported all these Goals. Aside from the fundamental wisdom of this combination in controlling land use, 1000's articulation of all these Goals has made it possible for some of its supporters who are no-growth advocates to support the urbanization and housing objectives.

A former county planning commissioner from Yamhill said "In a sense, 1000 Friends is the major force in the state to make Goal 3 mean anything. They are the only force that tries to keep LCDC honest. Their court cases and publicity make it possible--force the commissioners to say sorry, we have no alternative. Because of the unrelenting pressure for development, I bet we wouldn't have half of what we have now without 1000 Friends."

The Oregon Business Planning Council, modeled after 1000 Friends, has recently been organized to review local land use plans with a special interest in whether they comply with the Housing Goal. The Council, whose members include several timber companies, is also concerned with ensuring that plans comply with the Forest Lands Goal. The reviews of the Council are regarded as good professional efforts and, particularly in matters concerning the Forest Lands Goal, the Council and 1000 Friends "see eye to eye."

#### D. Possible Loopholes: Individual Dwellings

The EFU ordinance permits single-family farm-related dwellings by right and single-family non-farm related dwellings under certain conditions. Both of these have the potential for weakening the exclusive farm use zone.

##### 1. Farm Related Dwellings

Under the model EFU ordinance "dwellings customarily provided in conjunction with the farm use" are permitted by right. This is a reasonable provision, but it can lead to abuses. An owner can state that he intends to institute a "farm use" on his land. If in the view of local officials this meets the test of "current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting, and selling crops ... livestock ... dairy products ...



or any other agricultural or horticultural use or animal husbandry ..." then the owner is automatically allowed to build a house if his lot meets the county's minimum lot size standard (if the county has one). If not, he must proceed to obtain a lot size variance. Thus, an owner may establish the claim that he has a farm use and build a farm-related dwelling even though the use is in fact only a "hobby farm."

It is possible also to divide a large tract into two or more tracts of above-minimum lot size for "farm use". It had been hoped (by 1000 Friends among others) that Meeker v. Clatsop County would have closed this loophole by clearly excluding "hobby farms" from the definition of farm use. This expectation was not met.

A recent LCDC decision (City of Scappoose v. Columbia County, LCDC Appeal No. 79-043 (1980)), however, has made it clear that the Goals apply to a county's decision to issue building permits on lots in an undeveloped subdivision which had been approved prior to the establishment of the statewide Goals. LCDC stated that a permit cannot be issued for a non-farm dwelling unless an "exception" to Goal 3 is taken, or unless the owner can prove that the soil on his land is unsuitable for the production of crops and livestock and that the proposed development will not interfere with farm practices on adjacent parcels.

## 2. Non-Farm Rural Residences

The EFU ordinance permits single-family residential dwellings not provided in conjunction with farm use subject to approval and a finding by the governing body that the dwelling meets certain conditions (ORS 215.213 (3)). The conditions are that the proposed dwelling is compatible with farm uses, does not interfere with accepted farming practices on adjacent lands devoted to farm use, does not materially alter the overall land use pattern of the area, is situated on generally unsuitable land for the production of farm crops and livestock (considering terrain, soil, drainage and flooding, vegetation, size and location of the tract), and complies with other conditions the governing body considers necessary.

Although these criteria must appear in each county's EFU ordinance, they generally are interpreted loosely by local hearings officers and can generally be gotten around by a skillful attorney. Local officials tend to consider each request in isolation without taking account of the cumulative effect of additional non-farm residences on the continued viability



of farming areas. The model EFU ordinance places no limit on the number of split offs for non-residential development, except as this may be limited by the minimum lot size allowed in the EFU zone. Some counties, however, do not specify a minimum lot size.

Since the approval of individual dwellings is a widely dispersed, small scale process, it is very difficult to monitor it and impractical to intervene in more than a small fraction of instances.

VII. ACCOMPLISHMENTS OF THE PROGRAM

The Oregon program contains all the elements which would appear to be necessary for the success of an agricultural lands protection program. The program is progressing well and support for it has been demonstrated in two statewide referendum votes of over 60 percent in 1976 and in 1978.

All counties and cities in the state have conducted planning programs financed in part by the state through LCDC. In order to help local jurisdictions in their efforts to obtain acknowledgement, LCDC employs seven Field Representatives and six other staff persons. Close communication and cooperation has resulted from this effort, in part because several of the present Field Representatives were formerly employed as local or county planners for the jurisdictions they now oversee.

During the planning period, LCDC has actually acknowledged few plans as being in conformance with the Goals and Guidelines. Instead, they have followed their criteria strictly and returned a number of plans with a "Continuance Order" which specifies in what respects the submitted plan is acceptable, and specifies what changes must be made before it can be acknowledged as in compliance. If a county or city is not making satisfactory progress toward compliance, LCDC may issue an Enforcement Order which sets forth the nature of the non-compliance and the corrective action the jurisdiction must take. LCDC has been hesitant to issue enforcement orders, preferring to work cooperatively with the jurisdictions. In 1980, however, as a July 1 deadline for the submission of all plans approached, LCDC issued three enforcement orders: on Polk, Jefferson, and Curry Counties. The Polk and Jefferson orders enjoined the counties from approving further land divisions or rezonings into any but farm or forest zones. The Curry County order was even more severe.

Prompted by the July 1 deadline, the pace of submissions from all around the state increased markedly: 37 plans were submitted during June and an additional 39 on July 1. Of this total of 76 plans submitted for the first time, seven were county plans and the rest city plans. Yet to be received were plans from 59 cities (24 percent) and 18 counties (47 percent). The vast majority of these were expected within the next six months.

As of July 15, 1980, however, relatively few plans had been acknowledged to be in compliance with the Goals and Guidelines (Table 16-4). At that time five county plans (out of 36)

Table 16-4

COMPLIANCE STATUS OF COMPREHENSIVE  
PLANS PREPARED BY CITIES AND COUNTIES

	<u>Cities</u>	<u>Counties</u>
Received and being reviewed	44	6
Received and deemed incomplete	40	3 <sup>a</sup>
Reviewed and being continued	20	3
Not yet received	59	18
Other	1	2
Acknowledged to be in compliance	77	6 <sup>b</sup>
Total	241	38

<sup>a</sup>Includes plan for coastal region of Land County

<sup>b</sup>Includes Metro UGB

and 77 city plans (out of 241) had been acknowledged. For 74 of the 77 cities, Urban Growth Boundaries were approved as part of their plans. In addition, however, LCDC has approved the Urban Growth Boundary for the Portland Metro--a region which accounts for 40 percent of the state's population.

Even though relatively few plans have yet to be acknowledged to be in compliance with all Goals and Guidelines, the agricultural objectives of the program are close to achievement (Table 16-5). By July 1980, private lands totaling 11,954,000 acres had been put under EFU zoning--67 percent of the area which is expected to be in EFU when all plans are approved. In the Willamette Valley counties, which contain two-thirds of the state's population and nearly one-third of its Class I-IV soils, 84 percent of the anticipated ultimate total is already zoned EFU. Nearly all Class I and II land in the state is already under EFU zoning protection; most remaining controversy concerns the EFU zoning of land of lesser quality, though much of that is very productive. The extent of the coverage of the agricultural zoning is far larger than that



achieved in any other state, and there is strong reason to believe that the coverage will soon be extended to cover all agricultural land as designated in Goal 3.<sup>23</sup>

Table 16-5

PRIVATE LAND IN OREGON UNDER EFU ZONING AS OF  
FEBRUARY 1980 COMPARED WITH PROGRAM  
EXPECTATIONS AND TOTAL CLASS I-IV LAND  
(acres)

	<u>EFU Existing<sup>a</sup></u>	<u>EFU Expected<sup>a</sup></u>	<u>Total Class I-IV Land Existing<sup>b</sup></u>
Willamette Valley	1,477,600	1,763,251	2,729,673
Rest of Oregon	12,050,782	14,801,822	6,406,471 <sup>c</sup>
<u>Total State</u>	<u>13,528,382</u>	<u>16,565,073</u>	<u>9,136,144<sup>c</sup></u>

Note: A substantial portion of Class I-IV land is forested and is or will be zoned in a forest district which will provide equal or greater restrictions than an EFU zone.

<sup>a</sup>Data from LCDC.

<sup>b</sup>Oregon Soil and Water Conservation Needs Inventory, Soil Conservation Service, 1971 (1967 data). Total for Willamette Valley compiled by RSRI, Total for State compiled by LCDC.

<sup>c</sup>In comparing with EFU zoned land, bear in mind that the Agricultural Goal calls for the protection of Class V and VI land in addition to Class I-IV land.

Agricultural zoning, of course, was not unknown in Oregon before the adoption of Goal 3. Much of the land in the sparsely populated, wheat-growing counties along the Columbia River in Eastern Oregon (e.g., Sherman, Wasco, Gilliam, Morrow, and Umatilla Counties) had been zoned EFU. No comprehensive state-wide data on agricultural zoning before Goal 3 are known to exist. In attempt to shed some perspective, Henry Richmond, Executive Director of 1000 Friends of Oregon has stated, "If I were to hazard a guess, I would say that perhaps 40 to 50 percent of the land zoned EFU as of February 1980 has been zoned

EFU since the adoption of Goal 3, however, that is just a guess." That guess suggests that some 6,000,000 of the 13,528,000 acres now zoned EFU were zoned after the adoption of Goal 3.<sup>24</sup> This total of 6,000,000 acres is more than the total area under agricultural zoning for any other state. It is about three times as large as the acreage now under agricultural zoning in Wisconsin, which also has a strong state program (See case study no. 17). The EFU acreage directly attributable to the LCDC program includes much acreage close to growing urban areas. Because of the development potential of such land, it is unlikely that it would have been zoned agricultural in the absence of a strong state program. (The controversy in Yamhill County, discussed in the next section, about excepting lands from EFU zoning concerned just such lands).

In addition to the number of acres put under EFU zoning as a direct result of the application of Goal 3, it is important to note that the program of applying Senate Bill 100 and Goal 3 has imposed requirements and standards which go beyond EFU zoning. For example, in responding to Marion County's request for acknowledgement LCDC directed its staff in October 31, 1980 to eliminate vague standards for determining the minimum parcel size for land divisions. The county was directed to limit its analysis to commercial sized operations and not to consider "hobby-farm" acreages in setting the minimum parcel size which is sufficient for continuing the existing agricultural enterprise of the area. The county was also directed to consider the size of existing farm parcels over a broad area not just of adjacent parcels. LCDC also rejected a Marion County policy which would have allowed an "exception" from goal requirements if the "farm use ... of the parcel will be increased compared to the production that can be achieved by using accepted farming practices on the undivided property."

Goal 3 has also been a factor in preventing the development of existing lots in farm areas which are not as large as those of surrounding commercial agricultural operations, regardless of whether or not the land is zoned EFU. LCDC does not pass on each land division, but affects the process through the few are brought before it. Orders such as those in the Scapoose and Rutherford cases, discussed above, set standards which local governments bear in mind if they wish to ensure that their land division decisions will be sustained.

Most of the controversy involved in developing plans consistent with the Goals has centered on the extent of the Urban Growth Boundaries and the amount of land to be zoned EFU. There are insistent pressures at the local level to include more land



within the Urban Growth Boundaries than could be justified strictly on the projections of population, employment, and floor space and to designate sloped land, usually of Class III or above, for large lot rural residential rather than EFU. Those advocating more land within Urban Growth Boundaries generally argue that if there is not a considerable choice of building sites, land prices will rise excessively and the cost and availability of housing will be adversely affected and that growth of the local urban economy will be thwarted. LCDC generally takes the position that the critical thing affecting land price is how much undeveloped land is provided with urban services at any one time rather than the total acreage within the Urban Growth Boundary. No overall assessment of the suitability of the Urban Growth Boundaries approved to date is possible, since data cannot be readily obtained. The only careful statistical study of the effect of a growth boundary on land values indicates that the Salem urban growth boundary has not caused a significant discontinuity in the land value gradient.<sup>24</sup> To the extent that the growth boundary fails to create a significant difference between land values inside it and land values outside it, it also must be considered to have little effect on changing the pattern of development which would have occurred in its absence. 1000 Friends of Oregon, however, claims that there are many examples within five miles of an urban growth boundary where farm owners have been encouraged by the program to make investments of \$100,000 or more in milk-processing equipment or in fruit or nut trees with a 15-20 year production cycle. Since the initiation of the program these land owners have changed their perception of their areas from that of an urban fringe area completely unpredictable in terms of its predominant land uses in the next 5, 10, or 15 years to that of a stabilized area in which state-backed local land use plans will prevent interference by nearby residential uses in the future and where they will have the possibility of expanding their operations by lease or purchase (as the opportunity may present itself) at farm values, not development values.<sup>25</sup> It is clear that more statistical analysis of land values and systematic survey research of attitudes and investment plans of landowners should be conducted in areas near the growth boundaries now in effect.

Likewise, there is no comprehensive information on acreage currently proposed by county governments to be excepted from EFU zoning. The data of Table 16-5, however, suggest that in comparison with the large acreages brought under EFU zoning already, the amounts remaining in controversy are relatively small. Program officials anticipate that, except for a few counties which take basic issue with LCDC (e.g. Douglas County



and Lane County), bringing current local plans into compliance with the agricultural lands goal will involve shifts of relatively minor additional acreages among zoning categories. This finding attests to the fact that such great progress has already been made toward achieving the goals since their adoption. It also should be kept in mind that acreages which can properly be described as relatively minor in relation to acreages already under EFU zoning in Oregon are absolutely large and large in relation to acreages under agricultural zoning in other states. The next section discusses in some detail the final points of controversy in the Yamhill County comprehensive plan, which was resolved prior to the plan's being acknowledged to be in compliance with the goals in July 1980.

VIII. EXPERIENCE AT THE LOCAL LEVEL: YAMHILL COUNTYA. Background

The northeastern edge of Yamhill County lies within 20 miles of Portland, just a few miles beyond the METRO Urban Growth Boundary (Figure 16-5). The influence of Metropolitan Portland is apparent in the corridor which contains Newberg and McMinnville, but generally the county does not have strong ties to the Portland metropolitan area and functions as a rural economy oriented primarily to McMinnville, the smaller cities within its borders, and the Mid Willamette Valley region of Polk and Marion Counties.

Yamhill County is also bounded by the Salem metropolitan area, but Salem, the State Capitol, with a population of 90,000 is only one-fifth the size of Portland and its influence on the growth of Yamhill County is correspondingly much less, except for job opportunities connected with state government.

The relative isolation of Yamhill County is partly due to geographic barriers. Chehalem and Parrett Mountains lie along its northeastern boundary, separating the County from the Portland Metropolitan region. Along its eastern border flows the Willamette River, separating it from the major transportation routes and the string of cities in the center of the valley. There are no sewage districts and relatively few water districts within the County.

As of 1980, Yamhill County had 52,547 residents, 14,000 of them living in McMinnville and 10,000 in Newberg. The overall population density of the County was 86 persons per square mile of non-federally owned land. During the preceding ten years, the population had increased by 30 percent. A population of 80,196 is projected for the year 2000.

Most of the population is concentrated in the Newberg-McMinnville Corridor, which contains the County's good agricultural land. Ted Lopuszynski, Chairman of the Board of County Commissioners says, however, "We are just not losing agricultural land the way Washington and Clackamas Counties have." The northwestern half of the County is hilly and forested. It is the location of a major timber industry, but of few settlements.

The County contains 240,000 acres of Class I-IV lands: 82,000 in Class I and II lands and 156,00 acres in Class III and IV lands. Most of the Class I-IV lands have been under agricultural zoning for several years, as are additional lands

Figure 16-5

LOCATION OF YAMHILL COUNTY, OREGON





which have good potential for agriculture and for forestry.

Yamhill County's chief agricultural commodities include wheat, cherries, filberts, grapes, nursery stock and dairy products. Yamhill County is the second largest producer of eggs and poultry in all Oregon's counties and the County ranked ninth in the State in total farm sales in 1979. This is especially significant in that the County ranks 32nd (out of 36 counties) in terms of land area.

Farming accounts for 14.6 percent of employment in the County and 9.6 percent of income. Gross county farm sales for 1979 were an estimated \$64,649,000. The estimated value of good farmland is \$2,000-\$3,000 per acre for 20-acre tracts (with the average being around \$2,300) and \$1,600-\$1,800 per acre for 40-acre tracts. A five acre building lot, however, might range in price from \$20,000 to \$45,000 depending on its location.

Farmers' problems lie not so much in the production of crops as in their marketing. Over the years markets have been organized on an increasingly larger scale. (It's not like the old days when you filled a gunny sack with potatoes and put them in a store until they sold.") As a concomitant of this, a number of major canners in the region have closed.

There appears to be little local market for crops grown in Yamhill County. A small-scale local market is beginning to be served by roadside stands and "U-pick" farms. But there are no effective farmer cooperatives or other local market structures.

Lacking a local market, farmers sell their crops in advance and no farmer would plant without a contract. Therefore farmers grow only what they can contract to sell. As a result, the cropping pattern has changed from earlier years.

For example, at one time, Yamhill County was known for its string beans. Now few commercial string beans are grown in the County. Also, the County used to be a major producer of prunes. The prune orchards were badly damaged by the tail end of a hurricane which hit on Columbus Day, 1963. Even before that, prunes had been losing favor among consumers. Storm damage, changing food preferences and the cost of building and especially of fueling dehydrators for drying the fruit have combined to severely limit prunes as a major crop. Every year there are fewer dehydrators in the County; these dryers have only enough capacity for the orchards of their owners.

"For the old timers, it didn't take any money; they made small-scale dehydrators and fueled them with wood." Now dehydrators are larger, and fossil fuel is expensive.

Farm labor has also become a problem. The migrant labor circuit is not as robust as it once was, and high schoolers, who a few years ago provided a major portion of farm labor, now are prohibited from working because of laws to protect young people from exposure to herbicides.

Few farmers make all their income from farming in Yamhill County. Most supplement through part-time jobs or other businesses.

### B. Planning History

Yamhill County has generally been a leader among Oregon Counties in planning and land use control. Among the leaders who have been credited for Yamhill County's progress is Morris Majors, a former County Commissioner. In 1959, the County enacted a subdivision ordinance which applied only to land divisions of five acres or less. Over time the ordinance was amended to apply to ten-acre divisions, and in 1973 to apply to land divisions of all sizes. As early as 1961, general zoning was adopted for the Newberg area. This was expanded to include a general agricultural zone for the Newberg area in 1968. In 1974 a countywide comprehensive plan was completed. The Plan indicated that generally flat agricultural soils should be maintained for agriculture and that the foothills could be used for future rural residences and agricultural-forestry activities. The Plan designates roughly 261,000 acres as Agricultural/Forestry Large Holding (AFLH).

The countywide zoning ordinance, which dates from 1976, generally followed the 1976 comprehensive plan. Under it, 244,000 acres were zoned agricultural, a total which compares in gross to the 240,000 acres in class I-IV soils.

### C. Compliance with the Statewide Goals

A former Yamhill County Planning Director is now the LCDC Field Representative with responsibility for Yamhill County as well as other Willamette Valley counties. The present Planning Director is a native of the County. When he took his position in 1978, he and the staff thought that they might have to make only a few minor adjustments to the



1974 Comprehensive Plan to attain compliance with statewide goals. However, the compliance process turned out to be a two-year process of adding inventory information, changing plan policy statements and ordinance language, and changing areas designated for particular land uses. Thus, for three years, a major effort of the Planning staff has been to obtain acknowledgement of the County Plan from LCDC. The two major issues have been the areas designated for EFU zoning and the areas to be included within Urban Growth Boundaries.

### 1. EFU Zoning

With the adoption of the county-wide zoning ordinance in 1976, about 244,000 acres were zoned EFU. Under Goal 3 provisions, the County was abliged to examine an additional 38,000 acres that were composed of Class I-IV soils. These had been designated in the comprehensive plan as Agricultural/Forestry Small Holding and had been zoned with minimum lot sizes ranging between 40 and 10 acres (EF-40, AF-20, and AF-10) and for Very Low Density Residential (VLDR). The planning staff in cooperation with a special committee, identified these 38,000 acres consisting of 55 areas as being composed of tracts of less than 20 acres to such an extent that the land use pattern showed "a tendency to rural residential" and might be considered committed to that use. After analysis, the staff and the County Planning Commission concluded that only about 12,000 acres in fact were committed to rural residential use and should be excepted from EFU zoning. In February 1979, the Board of Commissioners held a public hearing which was expended into two extra sessions to accommodate the 300 people who attended. Chairman of the Board, Ted Lopuszynski recalled: "Seventy-five percent of the people didn't want to remove any land from rural residential zoning--expecially their own." The Commissioners listened to some 12 hours of testimony, studied each property in question, surveyed the land use pattern from the air, and visited particular problem situations in the field.

The biggest problem emerging from this review, according to Chairman Lopuszynski, was in the definition of agricultural land. Very few questioned Class I and II lands as agricultural lands, but many claimed that Class III and IV soils tended to be shallow and steeply sloped, that little of this land is now farmed and that few commercial farmers would consider farming it. In addition, many of the old timers did not seem so concerned about more people in the foothills. They could remember 50 years ago when the hills were full of people. Many empty one-room school houses attest to that.



After extensive study, in June 1979, the County Board requested LCDC to except 24,086 acres from EFU. This request was contested by 1000 Friends in a Petition for Review (LCDC No. 79-032).

LCDC reviewed this matter and concluded that the Yamhill County plan did not comply with Goal 3 in several respects. "Overall, the Department believes that on the basis of commitment somewhere in the range of 16,500 to 20,500 acres could be justified as an Exception to Goals 3 (Agricultural Lands) and 4 (Forest Lands)" rather than 24,086 acres proposed by the County. LCDC also instructed the County to provide more adequate justification for the Exception, by including (in addition to parcel size) quantitative information on land ownership, existing uses on and adjacent to those areas, actual public services available, and "a precise statement on why these factors irrevocably commit specific areas to nonfarm or nonforest uses."

LCDC's findings were contained in a Continuance Order which gave the County 120 days to make the necessary adjustments to its plan. A careful restudy by the planning staff identified about 3,500 acres which were not so parcelized that they could be justified as "irretrievably committed" to residential use. During the time of the restudy, discussion between staff and County Commissioners indicated that the County Board would approve an agricultural plan designation and EFU zoning for only about 2,000 of the 3,500 acres. But in fact, on April 23, 1980 the Board approved by ordinance the transfer of about 4,000 acres to EFU. The resulting proposal to LCDC by the County, then, was for an Exception for 21,378 acres as compared with the 20,500 acres maximum suggested by LCDC and the 12,000 advocated by 1000 Friends.

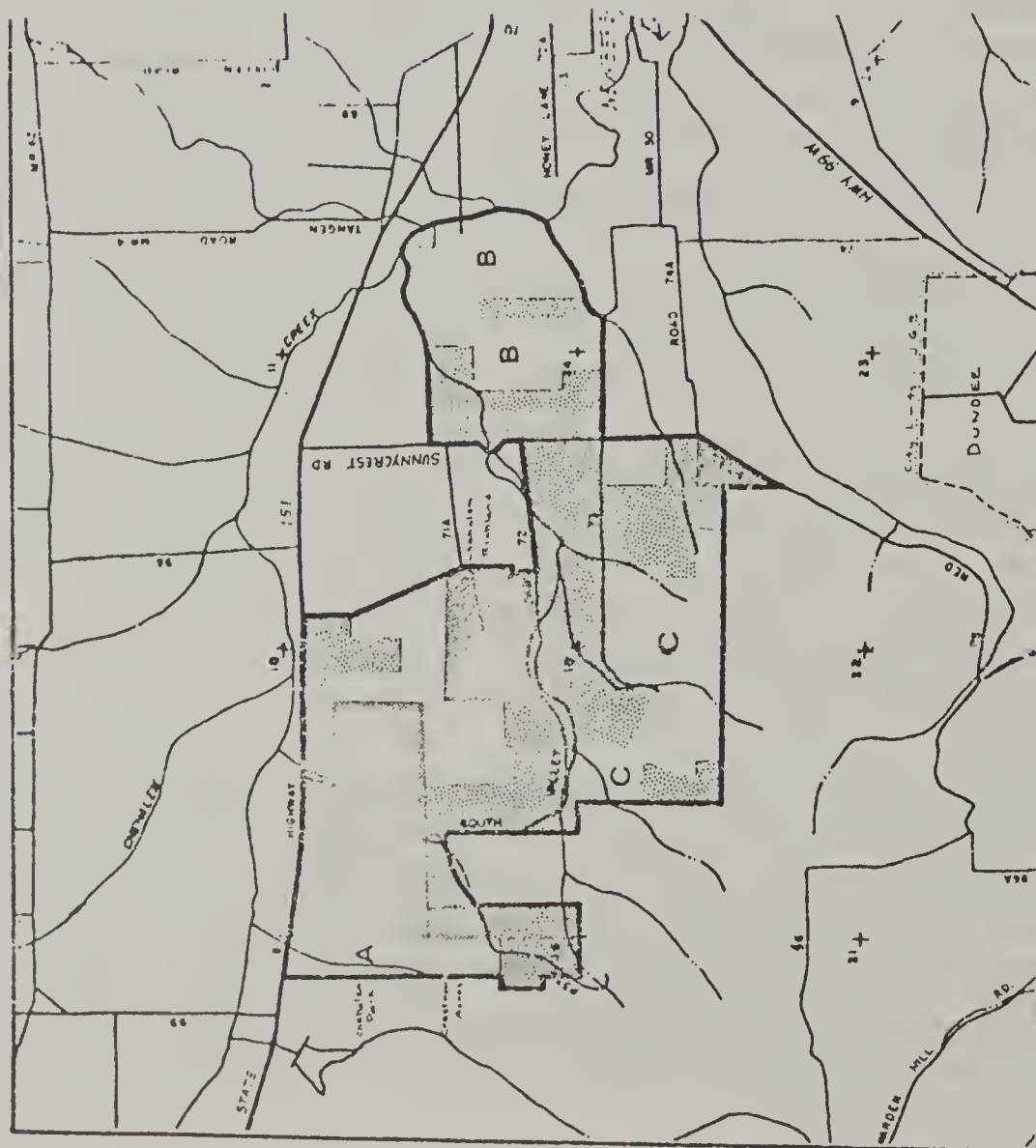
This was transmitted to LCDC as "Exceptions Statement II" (Exhibit "A" to Ordinance 234, April 23, 1980). In order to give some idea of the type and detail of information presented on each proposed exception, Figure 16-6 is presented for an area west of Newberg and north of Dundee. Similar data were presented for 23 contested code areas.

One County planner feels that based purely on the quality of the land resource only about 14,000 acres could be excepted from EFU zoning, but that given the intensity of feeling of residents and the need for the planning program as a whole to survive, that the 21,378-acre proposal was appropriate. It should be kept in mind that, although excepting 21,378 acres from agricultural use may seem to be excessive, this amount

Figure 16-6

EXAMPLE OF AREAS PROPOSED TO BE EXCEPTED FROM EFU ZONING

# Code Area 1.6 Chehalem Richland/Sunnycrest



## LEGEND

- Study Area Boundary
- County Boundary
- City Limits
- City Urban Growth Boundary
- Small Contiguous Parcel Pattern
- Planned Subdivision
- Parcels of 10 or more Acres

Scale: 1" = 1/2 mi.

Chehalem Richland/Sunnycrest  
PLAN DESIGNATION AF58H

CODE AREA 1.6  
TOTAL ACRES 1,326

### SCS SOIL CLASSIFICATIONS (IN ACRES)

Class I 2000 Class II 445 Class III 644 Class IV 279 Class VI 38

### FOREST SITE CLASSIFICATIONS (IN ACRES)

F1 120 F2 416 F3 373 F4 41 Not Available 467

### SOIL PRODUCTIVITY OF CODE AREA

65 percent in Jory-Yamhill-Nekia Association  
20 percent in Willakenzie-Hazelair Association  
15 percent in Woodburn-Willamette Association

### INDIVIDUAL OWNERSHIP PATTERNS

20.1 to 30.0 acres: 5 individual ownerships out of 5 parcels.  
30.1 to 40.0 acres: 4 individual ownerships out of 4 parcels.  
40+ acres: 10 individual ownerships out of 11 parcels.

### PARCEL SIZES

0 - 10.0 acres 101  
10.1 - 20.0 acres 30  
20.1 - 30.0 acres 5  
30.1 - 40.0 acres 4  
40+ acres 11

Total Number of Parcels in Code Area 151  
Parcels 10 Acres or Less in Size Occupied by a House or Mobile Home 72  
Total Number of Parcels Occupied by a House or Mobile Home 102

### DISCUSSION

This Code Area displays three distinct types of land use. The eastern portion, the lands within the Code Area in Sections 13 and 14, are characterized by field crop agricultural uses and small drainages. The middle portion of the Code Area, that land lying in Sections 15 and 22, shows a transition to orchard uses and is characterized by intermittent stands of fir, maple and oak. The western portion of the Code Area, those lands included in Section 16, is mostly in forested land use. Except for the eastern boundary, this Code Area is surrounded by large holding lands and accompanying zoning. Code Area 1.8 borders this Code Area on the eastern side. The easternmost boundary of this Code Area



<p><u>Chehalem Richland/Sunnycrest</u> Code Area 1.6</p> <p>also follows Chehalem Creek drainage. Harvey and Mess Creeks also wind through the Code Area.</p> <p>The growing season varies with elevation changes within the Code Area and except for pockets where late or early frosts occur, is typical of other bottomland and rolling hill areas of the County.</p> <p>Parcelization and existing settlement patterns are somewhat complicated within this Code Area. Except for a 43-acre parcel at the southeastermost corner of Section 14, all Code Area lands in Section 14 are developed in small parcels, with 34 dwellings located on a total of 49 parcels.</p> <p>Much the same situation occurs with Code Area lands in Section 16. Crestview Acres and Chehalem Park Subdivisions occupy much of the Section; the remaining area contains parcels averaging 15 acres in size, except for one 30-acre and one 26-acre parcel. In this Section, 41 dwellings are located on a total of 58 parcels.</p> <p>On the other hand, Code Area land in Sections 23, 22 and 13 shows a mixed-size parcelization, ranging from scattered parcels of less than 10 acres to parcels of 20 acres or more in size. Section 23 shows the most infill on parcels of 10 acres or less at this time; seven of the eight parcels have residences.</p> <p>Finally, Section 16 contains two large holdings split by the Code Area boundary.</p> <p>All Code Area land except for that in Sections 22 and 23 is served by the Newberg Fire District. The Dundee and Newberg Fire Districts share joint responsibility in Sections 22 and 23.</p> <p>Transportation access is considered good, with Sunnycrest and South Valley Roads being the main arterials through the Code Area.</p> <p>Irrigation suitability within this Code Area is classified as 90 percent fair to excellent (the excellent occurring in the portion containing Woodburn-Willamette Soils). Except for individual ponding and impoundments, residents are not served by an irrigation district. All the Code Area is classified as having fair to good domestic water availability, with the exception of some declining well yields experienced in Section 23 during 1977.</p> <p>While the Code Area generally possesses good soil suitability for septic drain-fields, all Sections contain up to 25 percent patches of poor soils for this purpose.</p>	<p><u>Chehalem Richland/Sunnycrest</u> Code Area 1.6</p> <p>consists of two parcels and portions of two others, all of which exceed 20 acres in size. Only one parcel contains a dwelling unit. Three of these parcels are currently zoned RF-20 and are in farm or forest use. The fourth is currently zoned AF-20 and is in native pasture. In total, these four parcels are a continuation of large farm/forest development pattern to the west and are a marked contrast to the smaller 5-to-10 acre residential settlements to the south and east. Residential development on these parcels would represent an intrusion into an established agricultural area.</p> <p>consists of four parcels and portions of ten others that are divided by major drainageways. Seven of these parcels exceed 20 acres in size and all but two of the fourteen are currently in agricultural use, principally dairy cattle, sheep, and hay. While this area abuts Code Area 1.6 on the east which has significant rural residential development, Area B is substantially separated by two principal drainageways and exhibits a distinctive agricultural appearance, more characteristic of the agricultural areas to the south. These parcels are currently zoned AF-20, and the lands within the study boundary contain three dwelling units.</p> <p>consists of ten parcels (approximately 228 acres). These parcels can best be characterized as orchard land, and virtually all in some phase of orchard production. The majority of this area is on a north slope, and two parcels have topographical features that could hinder agricultural use--steep slopes and deeply cut drainageways. Six of the ten parcels exceed ten acres in size. A rural residential level of development is not apparent in this area. Rather, these parcels resemble in character and use the expanse of orchards that spread southward.</p>
<p><u>Summary</u></p> <p>Commitment to rural residential use exists in Sections 14 and 15 of this Code Area because of the dominance of evenly distributed small parcels and residential settlement. Larger holdings in Sections 13 and 22 may face incompatibility problems from existing residential settlement on the scattered small parcels and adjacent VLDZ zoning outside this code Area. Code Area land in Section 16 is not committed to rural residential use.</p>	<p><u>Summary</u></p> <p>Commitment to rural residential use exists in Sections 14 and 15 of this Code Area because of the dominance of evenly distributed small parcels and residential settlement. Larger holdings in Sections 13 and 22 may face incompatibility problems from existing residential settlement on the scattered small parcels and adjacent VLDZ zoning outside this code Area. Code Area land in Section 16 is not committed to rural residential use.</p>

Source: Exceptions Statement II, Yamhill County Board of Commissioners.



constitutes only about 8 percent of the area in Agricultural/Forestry Large Holding shown in the Comprehensive Plan and already zoned EFU.

Based on this action by the County Board, 1000 Friends withdrew their petition and advised the Board that they would argue before LCDC for EFU designation of a limited number of parcels.

By the spring of 1980, both planning staff and the Board of Commissioners felt that they had gone as far as they could to balance between local landowners and agricultural land capabilities. In order to comply with the conditions of the LCDC continuance order, they had spent \$30-\$40,000 of County money and had "had to face swearing, irate citizens." Staff members indicated that they were weary of the efforts needed to comply with LCDC requests. They also felt that their plan was perhaps 98 percent within compliance bounds and, as planners, they were ready to move forward on plan implementation.

Chairman Lopuszynski indicated that the decision of the Board on the April 1980 revision "is going to be the bottom line." If LCDC demands more, "We're not going to do it. We have been one of the leading counties in the Valley as far as cooperating and going along and doing the right type of thing. Other counties have revolted already. It would be bad for LCDC if we revolted too. We took Goal 1 (Citizen Participation) into consideration. We have to recognize some of the demands of our citizens ... But this has to be our own plan, not LCDC's plan. I have lost pride in my plan. I no longer feel this is my plan. I had to modify it so many times I've lost pride of ownership."

A former member of the County Planning Commission noted that "Ted Lopuszynski used to be on the Planning Commission and was a strong land use advocate. Now he is almost on the other side. Some consider him the guy who opened the place up. It has been the continuing unrelenting pressure of people wanting the rights to build on their land.

It is the force of citizen protest which seems to have arrested the Yamhill plan short of textbook compliance with the Agricultural Goal. One planner said "It hurts the staff in their heart of hearts. Five-acre lots are a waste of land. Twenty-acre lots are too small for farming, and ten-acre lots are contemptible."

## 2. Other Continuance Issues

The LCDC Continuance Order also required Yamhill County to revise its EF-40 and AF-20 zones to demonstrate that the 40- and 20-acre minimum lot sizes used for all divisions of land would be appropriate for the continuation of the existing commercial agricultural enterprise within the area. The County responded by outright prohibition of subdivisions of any size in EFU lands and by requiring a Farm or Forest Management Plan to be submitted by the applicant prior to issuance of new residential building permits in most areas of EFU zoning.

Finally, LCDC required Yamhill County to revise its EF-40 and AF-20 zones to apply the review standards in ORS 215.213(3) to homestead partitions not found to be in conjunction with farm use and to nonfarm dwellings of record between 20 and 40 acres in the EF-40 zone.

The partitioning of large tracts had been governed primarily by a requirement in the zoning ordinance that a tract can be divided into no more than three pieces in any one year. Only about 2 percent of such requests had been denied over the past five years. Thus, if a landowner had 100 acres in a 20-acre minimum lot size zone, five lots could be created within two years. Since very little planning control would be exercised in approving these lots, the local argument was that it would be better to allow subdivisions (i.e., four or more lots) under planning supervision. LCDC, however, would not agree to this.

Permission to build on lots of record, even though they are smaller than the minimum lot size, has also been given routinely through a plan variance procedure at the County Level. About 400 have been recognized as building lots since 1975, but few have been built on. Most of these are in areas which were platted into five-acre lots at the turn of the century by the Pacific Northwest Fruit Company and other orchard companies as security for stock offerings. Some 2,000-3,000 such undersized lots are estimated to exist; most are still in orchards. The zoning ordinance has been amended to limit an owner of five or more such lots to a total of four building permits.

Dwellings allowed in conjunction with farm use also continue to be a problem, since there is no real standard for what constitutes a farm or a farm dwelling.

The five-acre dream of a little house in the country is the major problem facing the program according to both a



staff and a consulting planner. "At every Planning Commission meeting we would have requests for ten planning variances to build. There would be an endless parade of people who had saved up and bought a tract to retire on and have a little garden. The Commissioners would melt."

### 3. Urban Growth Boundaries

Urban Growth Boundaries have been acknowledged by LCDC for all cities in the County except the two largest--McMinnville and Newberg. (Each of the acknowledged cities has a population less than 1,500, except Sheridan, which has about 3,000 residents.) Figure 16-7 shows the growth boundaries of cities in northeastern Yamhill County in relation to their city limits and their currently built-up areas.

The UGB of Dundee, a small city near Newberg, was one of the first in the state to be acknowledged. The planning consultant for Dundee believed when the Goals and Guidelines were adopted that with a few minor changes the Dundee UGB would be acknowledged. In fact, the process consumed two years and involved ten revisions. As he explains it, LCDC kept changing the goal posts in the early years. The UGB, which was finally acknowledged in May 1978, lies in part within the City limits. It was calculated with a 50 percent market, or vacant land, factor. That is, by the year 2000 it was projected that one-third of the land would remain undeveloped. The inclusion of a market factor to ensure that the free market would be able to continue to work without driving land prices up significantly was approved by LCDC in the early years, but such arguments now carry much less weight.

In this section we shall discuss the UGBs of Newberg and McMinnville in some detail.

Newberg. Newberg began its efforts to develop a UGB in 1976, when citizen advisory committees of both the City and the County met and made a recommendation. This was followed by a joint meeting of the City and County planning commissions and finally by a joint meeting of the City Council and the County Board of Commissioners, who adopted a UGB in 1978. The UGB was based on a year 2000 population of 18,000, which had been projected by Portland State University.

As the City continued the development of its comprehensive plan, some members of City Council maneuvered to expand the UGB. In the final deliberations, an important issue was the fact that a larger UGB could not be justified before LCDC.



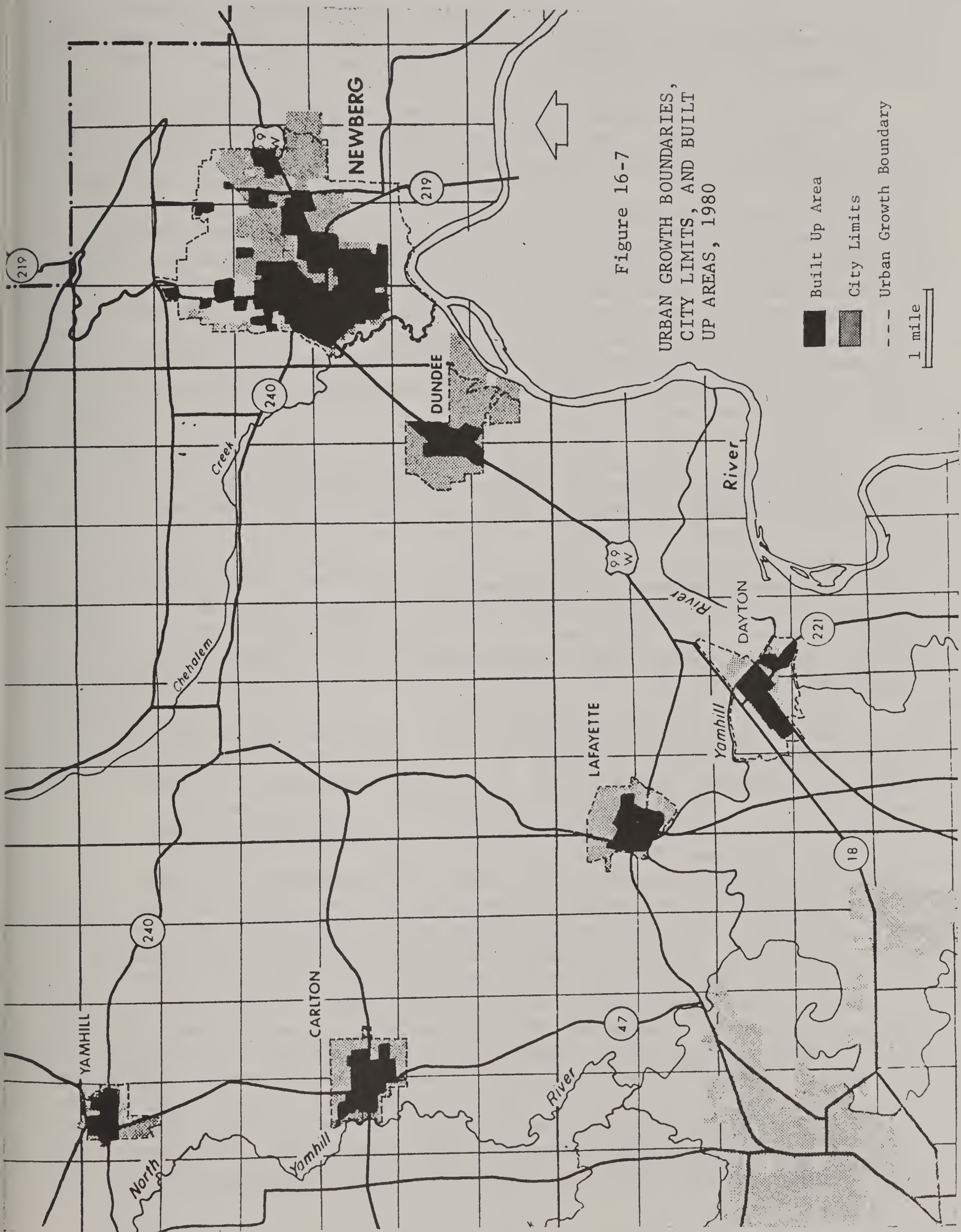


Figure 16-7  
URBAN GROWTH BOUNDARIES,  
CITY LIMITS, AND BUILT  
UP AREAS, 1980

On July 2, 1979, the Mayor broke a tie vote, enabling the City Council to reaffirm its UGB. On the same day a Growth Management Agreement between the City and County was executed.

The Growth Management Agreement recognizes the UGB on July 2, 1979 and notes that the City and County shall encourage urbanization within the boundary to occur in an orderly and efficient manner, and that the City, which is recognized as the ultimate provider of urban services, shall prepare for the orderly extension of public services and facilities within the boundary according to certain guidelines. Procedures for amendments to the UGB are established. These proposals, which may be initiated by either the City, the County, or an individual property owner, are to be referred quarterly to the Newberg Urban Area Management Commission, which is established for that purpose and other purposes which the City and County may determine.

The Newberg UGB, along with the Yamhill County Plan, was rejected by LCDC in November 1979. LCDC granted the city a six-month planning extension and noted that Newberg had relied on a 30 percent vacancy or market factor, which had not been substantiated by findings. An error in the UGB analysis had also been discovered which further inflated the size of the UGB: the area allowed for projected roads had been double-counted. At the same time a projection by the Mid-Willamette Council of Governments had become available which indicated a population of 27,000 for Newberg in the year 2000.

Following the rejection by LCDC, a movement developed in City Council to reopen the UGB issue, recognize the new population projection, and enlarge the growth boundary in accordance with it. This general question has not yet been resolved, but the Urban Growth Management Commission approved a 20-acre amendment to include a new school site on May 27, 1980. The second submittal to LCDC of the Newberg comprehensive plan and UGB was made in June 1980. Except for the 20-acre addition, the city had not changed its UGB since the first submittal, but had changed its arguments for justifying it. LCDC rejected the plan and UGB again and found the plan to be in violation of more goals than the first submittal. After two months of negotiation between the state and the city, a 120-day continuance was accepted by Newberg in December 1980. A third submittal, was scheduled for April 7, 1981.

McMinnville. The City of McMinnville initiated discussion of the UGB with the County at the staff level. The City and County planning commissions reviewed the proposals and



public hearings were held. In June 1979, the City adopted a UGB by resolution (an action of questionable legality) and the County Board of Commissioners, wishing to submit its completed County plan including all UGBs, adopted the same boundary by ordinance, even though there was a strong sentiment that the McMinnville UGB was too large. LCDC rejected the McMinnville UGB because, it contended, the City had not completed its comprehensive plan.

During the delineation of the McMinnville UGB there was a major controversy concerning the amount of land to be allowed for future industrial development. Most planners agreed that an area adjacent to the northeastern part of the city was the most logical location, but this land is all held by one family which had shown no interest in selling for industrial expansion in the foreseeable future. Because of this, there was strong sentiment to include an additional area for industry (really twice as much as is probably needed). In rejecting the UGB, LCDC, however, did not question the area for industry or the total population projection, but it did question the substantiation of the amount of land designated for residential uses.

Although there has been protracted controversy over delineating Urban Growth Boundaries, most people interviewed indicated that UGBs probably would be changed often and easily. A real estate agent stated that UGBs will be pretty easily changed, as they are "written in pencil, not set in concrete." The Chairman of the Board of Commissioners anticipated that UGBs would be updated every two-five years, with small amendments in between. The lack of clear guidelines on this subject by LCDC is evident.

#### 4. Compliance

Yamhill County's response to LCDC's Continuance Order, including the reduction from 24,000 acres to 21,378 acres to be excepted from EFU zoning, was submitted to LCDC in the Spring of 1980. In June 1980 LCDC approved the revised County Plan, making Yamhill County the first Willamette Valley County to be in compliance with the Statewide Goals. The eastern portion of the County Land Use Plan is presented in Figure 16-8. It contains all of the County's urban areas except for those of the cities of Sheridan and Willamina. Most of the western portion of the County is planned and zoned for commercial forestry and agricultural large holding activities. A total of 261,000 acres are zoned agricultural: 154,620 acres with a 20-acre minimum lot size. The agricul-



Figure 16-8

THE COMPREHENSIVE PLAN\*  
OF YAMHILL COUNTY, OREGON,  
EASTERN PORTION ONLY



\* Acknowledged to be in compliance with the Statewide Planning Goals, June 1980

tural zoning categories "EF-40" and "AF-20" set forth permitted and conditional uses consistent with ORS 215.

## FOOTNOTES

1. Based on data for 1967 in Oregon Soil and Water Conservation Needs Inventory, Oregon Conservation Needs Inventory Committee, January 1971.
2. Ken Bonnem, Executive Director of "Feedback," a Valley citizen-organizing effort, quoted in The New Oregon Trail, by Charles E. Little (Washington: The Conservation Foundation, 1974).
3. This and the following section draw heavily upon Charles E. Little, The New Oregon Trail (Washington: The Conservation Foundation, 1974).
4. ORS (308.237), Oregon Laws 1961, ch. 695, see Legislative Interim Committee on Revenue, Supplemental Report, Dec. 1974.
5. Oregon Laws 1963, ch. 577.
6. The method of estimating farm use value became a subject of contention and finally in 1967, the law was amended to state that bona fide farm properties were to be assessed at a value "that is exclusive of value attributable to urban influence or speculative purchases," Oregon Laws 1967, ch. 633. This was further clarified later in 1967 by a new subsection which required that when comparable sales figures could not be utilized, the assessed value of agricultural lands was to be arrived at by utilizing an income approach (ORS 308.345 chapter 9, section 1. Supplemental Report, Legislative Interim Comm. on Revenue, December 1974).
7. See Table 3-2 Coughlin, Keene, et al. The Protection of Farmland: A Reference Guidebook for State and Local Governments.
8. Comments of 1000 Friends of Oregon, communication from Henry R. Richmond (Executive Director) and Richard P. Benner (Staff Attorney), November 4, 1980; hereinafter referred to as Comments, 1000 Friends of Oregon.
9. Mr. Day is now a republican State Senator from Marion County.
10. Statewide Planning Goals and Guidelines adopted by the Land Conservation and Development Commission. December 27, 1974. Oregon Land Conservation and Development Commission.



11. 1000 Friends of Oregon v. Marion County (LCDC Appeal No. 77-006, Order of March 24, 1977), see also Miles v. Board of Commissioners of Clackamas County, \_\_\_\_\_ Or App \_\_\_\_\_ (October 27, 1980).
12. LCDC, Statewide Planning Goals and Guidelines, "Definitions", January 1, 1975.
13. Exclusive Farm Use Zoning as specified in Oregon statutes is not equivalent to Exclusive Agricultural Zoning as defined in Chapter 6 of the Guidebook. In the Guidebook, Oregon counties employing EFU zoning are classified variously as large lot and conditional use.
14. 1000 Friends of Oregon/Talcott v. Board of Commissioners of Douglas County (LUBA No. 79-006, Order of March 24, 1980). LUBA reversed the approval by the Douglas County Commissioners of the subdivision of an 860-acre cattle operation into one 360-acre and twelve 40-acre parcels. LUBA noted that a minimum of 200-250 acres is necessary for the continuation of the type of agriculture existing in that part of Douglas County.
15. As amended in 1979, ORS 308.372 specifies that the land must have produced the following gross income from farm use in three of the five years preceding application for deferral: (1) a minimum of \$500; (2) at least \$100 for each acre or fraction; (3) \$2,000 for farm units greater than 20 acres.
16. Comments, 1000 Friends.
17. Susan Leeson, "Urban Growth Boundaries Separate Developable Areas and Agricultural Lands", 1000 Friends of Oregon Newsletter, vol. 1, No. 4 (January 1976).
18. Comments, 1000 Friends.
19. R. Eber, "Oregon's Agricultural Land Protection Program", m.d.
20. 1000 Friends of Oregon Newsletter, vol. 2, No. 2, Nov. 1976.
21. Lawrence Kressel, Multnomah County, Deputy County Counsel, paper presented to the American Planning Association, April 14, 1980.
22. 1000 Friends of Oregon believes that such a measure is inconsistent with Senate Bill 100, and therefore will be

struck down by the courts. (1000 Friends, Comments.)

23. Final Report of Joint Legislation Committee on Land Use, November 1976, p. 32.
24. C. Russell Beaton, James S. Hanson, and Thomas H. Hibbard, The Salem Area Urban Growth Boundary: Evaluation of Economic Impacts and Policy Recommendations for the Future. (Report to the Mid-Willamette Valley Council of Governments, Salem, Oregon, November 1977). For a more general assessment of the urban growth boundary concept, see Margaret M.H. Collins, Oregon's Emerging Land Use Program: The Role of the Statewide Urbanization Goal in the 1970's, MUP thesis, Urban and Regional Planning Department, University of Oregon, 1977.
25. Comments, 1000 Friends.

APPENDIX A: STATUTORY PROVISIONS RELATED TO THE EXCLUSIVE  
FARM USE ZONE AND SPECIAL FARM USE ASSESSMENT

<u>SUBJECT</u>	<u>ORS</u>
<u>A. Land Use/Zoning</u>	
Agricultural Land Use Policy	215.243
Establishment of exclusive farm use zone permitted	215.203 (1)
Definition of "Farm Use"	215.203 (2)
Nonfarm uses allowed	
-Permitted	215.213 (1)
-Conditional	215.213 (2)
single family nonfarm residences and required findings	215.213 (3)
-Replacement of nonconforming uses allowed within EFU zone	215.215 (1)
-Spot zones allowed for nonfarm uses in the interior of an EFU zone consistent with 215.243	215.215 (2)
Prohibition against restrictive local ordinances of accepted farm practices in EFU zone	215.253 (1)
-Exemption for ordinances needed for the public health, safety and welfare	215.253 (2)
Public review of land divisions in EFU zone for consistency with 215.243	215.263 (1)
-Exemptions	215.263 (4)
<u>B. Taxing</u>	
Farm use valuation	308.345 (1)
-Comparable sales	308.345 (2)
-Income approach	308.345 (3)
Special farm use assessment	
-Zoned for exclusive farm use	308.370 (1)
-Not zoned for exclusive farm use	308.370 (2)



Minimum income required (unzoned)	308.372
Over 50% of adjusted gross income required to qualify wasteland and land under farm dwellings (unzoned).	308.372 (4)
Application for special assessment (unzoned)	308.375
"Farm Use" to be further defined by Department of Revenue (unzoned)	308.380
Disqualification from special assessment (unzoned)	308.390
Payment of deferred taxes (unzoned)	308.395
No deferred taxes paid when land taken by use of eminent domain (unzoned)	308.396
Disqualification from special assessment (EFU zone)	308.397
Tax penalty when land disqualified for special assessment (EFU zone)	308.399
-Exemptions	308.399 (3)
-Acquired by eminent domain	308.399 (3) (a)
-Removal from EFU zone when not requested by property owner	308.399 (3) (b)
Limit on special district assessment while land zoned EFU is qualified for special assessment	308.401
District attorneys to review and certify exclusive farm use zone	308.403
No tax penalty when farm use assessment changed to forest land assessment	321.960
Farm use valuation for inheritance tax purposes (EFU zone and unzoned)	118.155

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378-5454  
(3-24-78 and revised as needed)

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## APPENDIX B: SIGNIFICANT CASES INTERPRETING THE OREGON AGRICULTURAL LANDS PROGRAM

The opinions listed below are from Oregon's appellate courts (Supreme Court, Court of Appeals), the State Land Use Board of Appeals (LUBA) and the Land Conservation and Development Commission (LCDC). Prior to 1979, some appeals of local land use decisions went through Oregon's court system (subdivisions, partitions, permits) while other decisions (ordinances, plans, plan amendments) went to LCDC (the state land use agency) through a state appeals process. The 1979 Legislature established LUBA (three hearings officers appointed by the Governor) to hear all appeals of local land use decisions. However, before a LUBA decision becomes final, LUBA refers matters requiring interpretation of the state goals, including the Agricultural Lands Goal, to LCDC, the state agency.

### I. Counties must apply the Agricultural Lands Goal to the following types of land use decisions:

#### \* subdivision (four or more lots):

1000 Friends of Oregon v. Benton County, 575 P2d 651 (1977)

#### \* partitions (two or three lots):

Alexanderson v. Polk County, 289 Or 427 (1980);  
Jurgenson v. Union County Court, 600 P2d 1241 (1979)

#### \* building permits:

City of Scappoose/Publishers Paper Co./Crown Zellerbach Corp. v. Columbia County, LCDC No. 79-043 (1980)

#### \* zone change:

City of Sandy/1000 Friends v. Clackamas County, LCDC No. 76-008 (1978)

#### \* comprehensive plan adoption:

1000 Friends of Oregon v. Marion County, LCDC No. 75-006 (1977)

#### \* comprehensive plan amendments:

Teamsters Local No. 670/1000 Friends v. Hood River County, LCDC No. 78-019 (1979)

### II. Land Subject to Agricultural Lands Goal

#### \* Counties must plan all land outside urban growth boundaries with SCS soil classes I-IV (I-VI in eastern Oregon) in exclusive farm use zones unless an "Exception" is justified:

1000 Friends of Oregon v. Marion County, LCDC No. 75-006 (1977)

- \* If soil classes I-IV predominate, then the presumption is that the land is "agricultural," subject to the goal. If soils are not predominantly I-IV, the county must then determine whether the land is nonetheless suitable for farm use, or whether the land must be kept in a farm zone to protect near-by farm operations:

Meyer v. Lord, 586 P2d 367 (1978)

- \* When determining whether land is "predominately" class I-IV soils, counties must look at an entire contiguous ownership, not just a portion which is not "predominately" agricultural land:

Meyer v. Lord, 586 P2d 367 (1978)

III. Criteria for Nonfarm Residences in an Exclusive Farm Use Zone:

Nonfarm dwellings (i.e., not in conjunction with a farm use) are allowed if four criteria in ORS 215.213(3) are met. One of these criteria is that the land be "generally unsuitable land for the production of farm crops and livestock,..."

- \* When determining whether a parcel is "unsuitable," a county must consider terrain, adverse soil conditions, drainage, flooding, vegetation, location and size:

Stringer v. Polk County, \_\_\_\_ Or LUBA \_\_\_\_, LUBA 80-006 (1980)

- \* A parcel of agricultural land itself too small to be a self-supporting farm (five acres in the Rutherford case) is not "unsuitable" for farm use unless evidence shows that the parcel cannot be kept in production by means of lease or sale to a nearby farm:

Rutherford v. Armstrong, 572 P2d 1331 (1977)

- \* A parcel of land is not "unsuitable" for farm use simply because it has no cattle or sheep grazing value. A county must consider other possible farm uses, such as growing grapes, for which the land may be suitable:

Hillcrest Vineyard/1000 Friends v. Douglas County, 608 P2d 285 (1980)

- \* A parcel of land is not "unsuitable" for farm use if it is suitable for hay and pasture:

Still v. Marion County, 600 P2d 433 (1979)

- \* Not just any evidence that land is not suitable for farm use is enough to allow a nonfarm dwelling in a farm zone. Evidence must be "substantial," that is, it must be evidence which a reasonable mind could accept as adequate to support a conclusion:

Miles v. Clackamas County, 48 Or App 951, \_\_\_\_ P2d \_\_\_\_ (1980)



- \* To approve a nonfarm dwelling in an EFU zone a county must find that each nonfarm standard in ORS 215.213(3) has been satisfied. Failure to address one standard renders the nonfarm approval invalid:

Still v. Marion County, 600 P2d 433 (1979)

Miles v. Clackamas County, 48 Or App 951, \_\_\_\_ P2d \_\_\_\_ (1980).

#### IV. Criteria for Division of Land into "Farm" Parcels.

- \* A county cannot permit division of farmland into parcels too small to support commercial agriculture in an area:

1000 Friends/Talcott v. Douglas County, 1 Or LUBA 42 (1980)

- \* If 200-250 acres are necessary for commercial grazing in an area, a county cannot establish a minimum lot size of 150-acres and cannot permit division of grazing land into 150-acre parcels:

1000 Friends/Talcott v. Douglas County, 1 Or LUBA 42 (1980);

Sane Orderly Development/1000 Friends v. Douglas County, \_\_\_\_ Or LUBA, \_\_\_\_ LUBA No. 80-121 (1981)

- \* A county cannot approve creation of a five-acre staging area for a ewe/lamb operation unless five-acre staging areas are typical among commercial sheep operations in the area:

City of Eugene v. Lane County, \_\_\_\_ Or LUBA \_\_\_\_, LUBA No. 80-053 (1980)

#### V. Criteria for Approval of Farm Dwellings

- \* A county cannot approve a farm dwelling on an existing parcel unless the parcel is large enough for the commercial agriculture of the area. A house on six acres in conjunction with two acres of filberts, two acres of christmas trees and 1/2 acre of apple trees was not shown to be typical of commercial farms in the area:

1000 Friends of Oregon v. Benton County, \_\_\_\_ Or LUBA \_\_\_\_, LUBA No. 80-134 (1981)

#### VI. "Exceptions" to the Agricultural Lands Goal

- \* An "exception" to the Agricultural Lands Goal, to permit rural residential or other nonfarm use, is allowed only if a county demonstrates that the land is needed and no alternatives exist or if the county shows that the land is "committed" to nonfarm use:

1000 Friends v. Marion County, 75-006 (1977)

- \* A market demand for rural residential lots of agricultural land does not constitute a "need" for residential lots. Housing needs of the state are to be satisfied within urban growth boundaries:

Still v. Marion County, 600 P2d 433 (1979)

- \* A shopping center on rural agricultural land that would rely upon drawing patrons from within urban growth boundaries to be successful is an urban use and is not "needed" on agricultural land:

City of Sandy v. Clackamas County, LCDC No. 79-029 (1980)

- \* A tract of agricultural land is "committed" to nonfarm use only if a county demonstrates, by compelling reasons, that it is no longer possible to farm the land:

1000 Friends of Oregon v. Clackamas County, LCDC No. 78-036 (1979);

1000 Friends of Oregon v. Multnomah County, LCDC No. 79- (19 )

#### VII. Standing for Farmers

- \* Farmers have standing to allege violations of Oregon's farmland protection laws, even if they are not in close proximity to the subject property, where they show a reasonable likelihood that the county decision challenged will increase the cost of farmland to rent or buy and otherwise interfere with farm practices:

1000 Friends of Oregon v. Benton County, \_\_\_\_ Or LUBA \_\_\_\_, LUBA No. 80-134 (1981)

#### VIII. The "Taking" Issue

- \* A zone change from low-density residential to farm-forest use does not constitute a taking of private property without just compensation if the landowner can make beneficial use of the property for farm purposes, even though not as profitably as for residential purposes allowed before the zone change:

Joyce v. City of Portland, 546 P2d 1100 (1976)

RE:cp  
4293A

Appendix C: Relevant Oregon Statutes

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Chapter 215 County Planning; Zoning; Housing Codes

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## Chapter 197

### 1979 REPLACEMENT PART

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## COMPREHENSIVE PLANNING COORDINATION

Note: Sections 1 to 6a and sections 28 and 29, chapter 772, Oregon Laws 1979, provide:

Sec. 1. Sections 1a to 6a of this Act are added to and made a part of ORS 197.005 to 197.430.

Sec. 1a. It is the policy of the Legislative Assembly that time is of the essence in reaching final decisions in matters involving land use and that those decisions be made consistently with sound principles governing judicial review. It is the intent of the Legislative Assembly in enacting sections 1a to 6a of this 1979 Act to accomplish these objectives.

Sec. 2. (1) There is hereby created a Land Use Board of Appeals consisting of not more than five members appointed by the Governor subject to confirmation by the Senate in the manner provided in ORS 171.560 and 171.570. The board shall consist of a chief hearings referee and such other referees as the Governor considers necessary. The members of the board first appointed by the Governor shall be appointed by the Governor to serve for a term beginning November 1, 1979, and ending July 1, 1983. The salaries of the members shall be fixed by the Governor unless otherwise provided for by law. The salary of a member of the board shall not be reduced during the period of service of the member.

(2) The Governor may at any time remove any member of the board for inefficiency, incompetence, neglect of duty, malfeasance in office or unfitness to render effective service. Before such removal the Governor shall give the member a copy of the charges against the member and shall fix the time when the member can be heard in defense against the charges, which shall not be less than 10 days thereafter. The hearing shall be open to the public and shall be conducted in the same manner as a contested case under ORS 183.310 to 183.500. The decision of the Governor to remove a member of the board shall be subject to judicial review in the same manner as provided for review of contested cases under ORS 183.480 to 183.500.

(3) Referees appointed under subsection (1) of this section shall be members in good standing of the Oregon State Bar.

Sec. 2a. (1) The board shall conduct review proceedings upon petitions filed in the manner prescribed in section 4 of this 1979 Act.

(2) In conducting review proceedings the members of the board may sit together or separately as the chief hearings referee shall decide.

(3) The chief hearings referee shall apportion the business of the board among the members of the board. Each member shall have the power to hear and issue orders on petitions filed with the board and on all issues arising under those petitions, except as provided in section 6 of this 1979 Act.

(4) The board shall adopt rules governing the conduct of review proceedings brought before it under sections 4 to 6 of this 1979 Act.

Sec. 3. As used in sections 4 to 6 of this 1979 Act:

(1) "Land use decision" means:

(a) A final decision or determination made by a city, county or special district governing body that concerns the adoption, amendment or application of:

(A) The state-wide planning goals;

(B) A comprehensive plan provision; or

(C) A zoning, subdivision or other ordinance that implements a comprehensive plan; or

(b) A final decision or determination of a state agency other than the Land Conservation and Development Commission, with respect to which the agency is required to apply the state-wide planning goals.

(2) "Person" means any individual, partnership, corporation, association, governmental subdivision or agency or public or private organization of any kind.

Sec. 4. (1) Review of land use decisions under sections 4 to 6 of this 1979 Act shall be commenced by filing a notice of intent to appeal with the Land Use Board of Appeals. Subject to the provisions of section 6a of this 1979 Act relating to judicial review by the Court of Appeals, the board shall have exclusive jurisdiction to review any land use decision of a city, county or special district governing body or a state agency in the manner provided in sections 5 and 6 of this 1979 Act.

(2) Except as provided in subsection (3) of this section, any person whose interests are adversely affected or who is aggrieved by a land use decision and who has filed a notice of intent to appeal as provided in subsection (4) of this section may petition the board for review of that decision or may, within a reasonable time after a petition for review of that decision has been filed with the board, intervene in and be made a party to any review proceeding pending before the board.

(3) Any person who has filed a notice of intent to appeal as provided in subsection (4) of this section may petition the board for review of a quasi-judicial land use decision if the person:

(a) Appeared before the city, county or special district governing body or state agency orally or in writing; and

(b) Was a person entitled as of right to notice and hearing prior to the decision to be reviewed or was a person whose interests are adversely affected or who was aggrieved by the decision.

(4) A notice of intent to appeal a land use decision shall be filed not later than 30 days after the date the decision sought to be reviewed becomes final. Copies of the notice shall be served upon the city, county or special district governing body or state agency and the applicant of record, if any, in the city, county or special district governing body or state agency proceeding. The notice shall be served and filed in the form and manner prescribed by rule of the board and shall be accompanied by a filing fee of \$50 and a deposit for costs of \$150. In the event a petition for review is not filed with the board as required in subsection (6) of this section, then the filing fee and deposit shall be awarded to the city, county, special district or state agency as cost of preparation of the record.



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(5) Within 20 days after service of the notice of intent to appeal, or within such further time as the board may allow, the city, county or special district governing body or state agency shall transmit to the board the original or a certified copy of the entire record of the proceeding under review. By stipulation of all parties to the review proceeding the record may be shortened. The board may require or permit subsequent corrections to the record.

(6) Within 20 days after the date of transmittal of the record, a petition for review of the land use decision and supporting brief shall be filed with the board. The petition shall include a copy of the decision sought to be reviewed and shall state:

- (a) The facts that establish that the petitioner has standing.
- (b) The date of the decision.
- (c) The issues the petitioner seeks to have reviewed.

(7) Review of a decision under sections 4 to 6 of this 1979 Act shall be confined to the record. In the case of disputed allegations of unconstitutionality of the decision, standing, ex parte contacts or other procedural irregularities not shown in the record which, if proved, would warrant reversal or remand, the board may take evidence and make findings of fact on those allegations. The board shall be bound by any finding of fact of the city, county or special district governing body or state agency for which there is substantial evidence in the whole record.

(8) The board shall issue a final order within 90 days after the date of filing of the petition. If the order is not issued within 90 days and no extension of time has been stipulated to by the parties, the decision being reviewed shall be considered affirmed and the decision may then be appealed in the manner provided in section 6a of this 1979 Act.

(9) Upon entry of its final order the board may, in its discretion, award costs to the prevailing party including the cost of preparation of the record if the prevailing party is the city, county or special district governing body or state agency whose decision is under review. The deposit required by subsection (4) of this section shall be applied to any costs charged against the petitioner.

(10) Orders issued under this section may be enforced in appropriate judicial proceedings.

(11) The board shall provide for the publication of its orders and those previously issued by the commission which are of general public interest in the form it deems best adapted for public convenience. Publications shall constitute the official reports of the board and the commission and shall be made available for distribution in the manner provided in ORS 2.160 and 9.790.

(12) All fees collected by the board under this section that are not awarded as costs shall be paid over to the State Treasurer to be credited to the General Fund.

**Sec. 5.** (1) Where a petition for review contains only allegations that a land use decision violates the state-wide planning goals, the board shall review the decision and proceed as provided in section 6 of this 1979 Act.

(2) Where a petition for review contains no allegations that a land use decision violates the state-wide planning goals, the board shall review the decision and prepare a final order affirming, reversing or remanding the decision.

(3) Where a petition for review contains both allegations that a land use decision violates the state-wide planning goals and other allegations of error, the board shall review the decision and proceed as provided in section 6 of this 1979 Act with respect to the allegations of violation of the state-wide planning goals, and prepare an order addressing all issues not related to the state-wide planning goals. The decision of the board concerning any issues not related to the state-wide planning goals shall be final, but no final order shall be issued until the commission has reviewed the recommendation of the board on the issues concerning the state-wide planning goals under section 6 of this 1979 Act and issued its determination. The board shall incorporate the determination of the commission into the final order to be issued under this subsection.

(4) The board shall reverse or remand the land use decision under review only if:

(a) The board finds that the city, county or special district governing body:

(A) Exceeded its jurisdiction;

(B) Failed to follow the procedure applicable to the matter before it in a manner that prejudiced the substantial rights of the petitioner;

(C) Made a decision that was not supported by substantial evidence in the whole record;

(D) Improperly construed the applicable law; or

(E) Made a decision that was unconstitutional; or

(b) After review in the manner provided in section 6 of this 1979 Act, the commission has determined that the city, county or special district governing body or state agency violated the state-wide planning goals.

(5) Final orders of the board may be appealed to the Court of Appeals in the manner provided in section 6a of this 1979 Act.

**Sec. 6.** (1) At the conclusion of a review proceeding under sections 4 and 5 of this 1979 Act, the board shall prepare a recommendation to the commission concerning any allegations of violation of the state-wide planning goals contained in the petition and shall submit a copy of its recommendation to the commission and to each party to the proceeding. The recommendation shall include a general summary of the evidence contained in the record and proposed findings of fact and conclusions of law concerning the allegations of violation of the state-wide planning goals. The recommendation shall also state whether the petition raises matters of such importance that the commission should hear oral argument from the parties.

(2) Each party to the proceeding shall have the opportunity to submit written exceptions to the board's recommendation, including that portion of the recommendation stating whether oral argument should be allowed.



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The exceptions shall be filed with the board and submitted to the commission for review.

(3) The commission shall review the recommendation of the board and any exceptions filed thereto. The commission shall allow the parties an opportunity to present oral argument to the commission unless the board recommends that oral argument not be allowed and the commission concurs with the board's recommendation. The commission shall be bound by any finding of fact of the city, county, special district or state agency for which there is substantial evidence in the record. The commission shall issue its determination on the recommendation of the board and return the determination to the board for inclusion in the board's order under section 5 of this 1979 Act within such time as is necessary to allow the board to prepare and issue a final order in compliance with the requirements of section 4 of this 1979 Act. If additional time is required, the commission shall obtain the consent of the parties for a postponement.

(4) No determination of the commission issued under subsection (3) of this section is valid unless all members of the commission have received the recommendation of the board in the matter and any exceptions thereto that were timely filed with the board and at least four members of the commission concur in its action in the matter.

(5) If the commission receives a recommendation from the board concerning a petition alleging that a comprehensive plan provision or a zoning, subdivision or other ordinance or regulation is in violation of the statewide goals, and the commission has received a request from the city or county which adopted such comprehensive plan provision or zoning, subdivision or other ordinance or regulation asking that the commission grant a compliance acknowledgment pursuant to subsection (1) of ORS 197.251, the commission may suspend its consideration of the request for compliance acknowledgment until it has issued its determination on the recommendation of the board and the board has issued a final order. In any event the commission shall issue its determination on the recommendation of the board within the time limits established in subsection (3) of this section.

(6) The commission shall adopt such rules as it considers necessary for the conduct of review proceedings brought before it for determination under this section.

Sec. 6a. (1) Any party to a proceeding before the Land Use Board of Appeals under sections 4 to 6 of this 1979 Act, may seek judicial review of a final order issued in those proceedings.

(2) Notwithstanding the provisions of ORS 183.480 to 183.500, judicial review of orders issued under sections 4 to 6 of this 1979 Act shall be solely as provided in this section.

(3) Jurisdiction for judicial review of proceedings under sections 4 to 6 of this 1979 Act is conferred upon the Court of Appeals. Proceedings for review shall be instituted by filing a petition in the Court of Appeals. The petition shall be filed within 30 days only following the date the order upon which the petition is based is served. Date of service shall be the date on which the board delivered or mailed its order.

(4) The petition shall state the nature of the order the petitioner desires reviewed. Copies of the petition shall be served by registered or certified mail upon the

board, and all other parties of record in the board proceeding.

(5) (a) The filing of the petition shall not stay enforcement of the board order, but the board may do so upon a showing of:

- (A) Irreparable injury to the petitioner; and
- (B) A colorable claim of error in the order.

(b) When a petitioner makes the showing required by paragraph (a) of this subsection, the board shall grant the stay unless the board determines that substantial public harm will result if the order is stayed. If the board denies the stay, the denial shall be in writing and shall specifically state the substantial public harm that would result from the granting of the stay.

(c) When the board grants a stay it may impose such reasonable conditions as the giving of a bond or other undertaking and that the petitioner file all documents necessary to bring the matter to issue before the Court of Appeals within specified reasonable periods of time.

(d) Denial of a motion for stay by the board is subject to review by the Court of Appeals under such rules as the court may establish.

(6) Within 20 days after service of the petition, or within such further time as the court may allow, the board shall transmit to the court the original or a certified copy of the entire record of the proceeding under review, but, by stipulation of all parties to the review proceeding, the record may be shortened. Any party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs. The court may require or permit subsequent corrections or additions to the record when deemed desirable. Except as specifically provided in this subsection, the cost of the record shall not be taxed to the petitioner or any intervening party. However, the court may tax such costs and the cost of transcription of record to a party filing a frivolous petition for review.

(7) Review of an order issued under sections 4 to 6 of this 1979 Act shall be confined to the record, the court shall not substitute its judgment for that of the board as to any issue of fact.

(8) The court may affirm, reverse or remand the order. The court shall reverse or remand the order only if it finds:

(a) The order to be unlawful in substance or procedure, but error in procedure shall not be cause for reversal or remand unless the court shall find that substantial rights of the petitioner were prejudiced thereby;

(b) The order to be unconstitutional; or

(c) The order is not supported by substantial evidence in the whole record.

Sec. 28. (1) Sections 1 to 6a of this Act are repealed July 1, 1983.

(2) Notwithstanding subsection (1) of this section, any petition filed with the Land Use Board of Appeals before July 1, 1983, that is still pending on that date,



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shall be finally determined by the Land Use Board of Appeals under sections 4 to 6 of this Act.

**Sec. 29.** The provisions of sections 1 to 8 and 11 and 12 of this Act first apply to petitions for review of land use decisions to be filed on or after November 1, 1979. Any petition before the Land Conservation and Development Commission or any circuit court still pending on November 1, 1979, shall be finally determined by the commission or the court in the manner provided in ORS 34.010 to 34.100, 197.300 to 197.315 before the effective date of this Act [November 1, 1979].

## GENERAL PROVISIONS

**197.005 Legislative findings.** The Legislative Assembly finds that:

(1) Uncoordinated use of lands within this state threaten the orderly development, the environment of this state and the health, safety, order, convenience, prosperity and welfare of the people of this state.

(2) To promote coordinated administration of land uses consistent with comprehensive plans adopted throughout the state, it is necessary to establish a process for the review of state agency, city, county and special district land conservation and development plans for compliance with state-wide planning goals.

(3) Except as otherwise provided in subsection (4) of this section, cities and counties should remain as the agencies to consider, promote and manage the local aspects of land conservation and development for the best interests of the people within their jurisdictions.

(4) The promotion of coordinated state-wide land conservation and development requires the creation of a state-wide planning agency to prescribe planning goals and objectives to be applied by state agencies, cities, counties and special districts throughout the state.

(5) The impact of proposed development projects, constituting activities of state-wide significance upon the public health, safety and welfare, requires a system of permits reviewed by a state-wide agency to carry out state regulations prescribed for application for activities of state-wide significance throughout this state. [1973 c.80 §1; 1977 c.664 §1]

**197.010 Policy.** The Legislative Assembly declares that, in order to assure the highest possible level of liveability in Oregon, it is necessary to provide for properly prepared and

coordinated comprehensive plans for cities and counties, regional areas and the state as a whole. These comprehensive plans:

(1) Must be adopted by the appropriate governing body at the local and state levels;

(2) Are expressions of public policy in the form of policy statements, generalized maps and standards and guidelines;

(3) Shall be the basis for more specific rules, regulations and ordinances which implement the policies expressed through the comprehensive plans;

(4) Shall be prepared to assure that all public actions are consistent and coordinated with the policies expressed through the comprehensive plans; and

(5) Shall be regularly reviewed and, if necessary, revised to keep them consistent with the changing needs and desires of the public they are designed to serve. [1973 c.80 §2]

**197.015 Definitions for ORS 197.005 to 197.430 and 469.350.** As used in ORS 197.005 to 197.430 and 469.350, unless the context requires otherwise:

(1) "Activity of state-wide significance" means a land conservation and development activity designated pursuant to ORS 197.400.

(2) "Board" means the Land Use Board of Appeals or any member thereof.

(3) "Commission" means the Land Conservation and Development Commission.

(4) "Committee" means the Joint Legislative Committee on Land Use.

(5) "Comprehensive plan" means a generalized, coordinated land use map and policy statement of the governing body of a state agency, city, county or special district that interrelates all functional and natural systems and activities relating to the use of lands, including but not limited to sewer and water systems, transportation systems, educational systems, recreational facilities, and natural resources and air and water quality management programs. "Comprehensive" means all-inclusive, both in terms of the geographic area covered and functional and natural activities and systems occurring in the area covered by the plan. "General nature" means a summary of policies and proposals in broad categories and does not necessarily indicate specific locations of any area, activity or use. A plan is "coordinated" when the needs of all levels of governments, semipublic and private agencies and the citizens of Oregon



have been considered and accommodated as much as possible. "Land" includes water, both surface and subsurface, and the air.

(6) "Department" means the Department of Land Conservation and Development.

(7) "Director" means the Director of the Department of Land Conservation and Development.

(8) "Goals" mean the mandatory statewide planning standards adopted by the commission pursuant to ORS 197.005 to 197.430.

(9) "Guidelines" mean suggested approaches designed to aid cities and counties in preparation, adoption and implementation of comprehensive plans in compliance with goals and to aid state agencies and special districts in the preparation, adoption and implementation of plans, programs and regulations in compliance with goals. Guidelines shall be advisory and shall not limit state agencies, cities, counties and special districts to a single approach.

(10) "Special district" means any unit of local government, other than a city or county, authorized and regulated by statute and includes, but is not limited to: Water control districts, irrigation districts, port districts, regional air quality control authorities, fire districts, school districts, hospital districts, mass transit districts and sanitary districts.

(11) "Voluntary association of local governments" means a regional planning agency in this state officially designated by the Governor pursuant to the federal Office of Management and Budget Circular A-95 as a regional clearinghouse. [1973 c.80 §3; 1977 c.664 §2; 1979 c.772 §7]

#### LAND CONSERVATION AND DEVELOPMENT COMMISSION

**197.030 Land Conservation and Development Commission; members, appointment, confirmation, term, vacancies.**

(1) There is established a Land Conservation and Development Commission consisting of seven members appointed by the Governor, subject to confirmation by the Senate in the manner provided in ORS 171.560 and 171.570.

(2) In making appointments under subsection (1) of this section, the Governor shall select from residents of this state one member from each congressional district and the remaining members from the state at large reflecting the geographic and occupational

makeup of the state. At least one and no more than two members shall be from Multnomah County. At least one member shall be an elected city or county official at the time of appointment.

(3) The term of office of each member of the commission is four years, but a member may be removed by the Governor for cause. Before the expiration of the term of a member, the Governor shall appoint a successor. No person shall serve more than two full terms as a member of the commission.

(4) If there is a vacancy for any cause, the Governor shall make an appointment to become immediately effective for the unexpired term. [1973 c.80 §5; 1977 c.664 §3]

**197.035 Commission officers, selection; quorum; compensation and expenses.** (1) The commission shall select one of its members as chairman and another member as vice chairman, for such terms and with duties and powers necessary for the performance of the functions of such offices as the commission determines. The vice chairman of the commission shall act as the chairman of the commission in the absence of the chairman.

(2) A majority of the members of the commission constitutes a quorum for the transaction of business.

(3) Members of the commission are entitled to compensation and expenses as provided in ORS 292.495. [1973 c.80 §§7, 8]

**197.040 Duties of commission, generally.** (1) The commission shall:

(a) Direct the performance by the director and his staff of their functions under ORS 197.005 to 197.430 and 469.350.

(b) In accordance with the provisions of ORS 183.310 to 183.500, promulgate rules that it considers necessary in carrying out ORS 197.005 to 197.430 and 469.350. In designing its administrative requirements, the commission shall allow for the diverse administrative and planning capabilities of local governments.

(c) Cooperate with the appropriate agencies of the United States, this state and its political subdivisions, any other state, any interstate agency, any person or groups of persons with respect to land conservation and development.

(d) Appoint advisory committees to aid it in carrying out ORS 197.005 to 197.430 and

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469.350 and provide technical and other assistance, as it considers necessary, to each such committee.

(2) Pursuant to ORS 197.005 to 197.430 and 469.350, the commission shall:

(a) Establish state-wide planning goals consistent with regional, county and city concerns;

(b) Issue permits for activities of state-wide significance;

(c) Prepare, collect, provide or cause to be prepared, collected or provided land use inventories;

(d) Prepare state-wide planning guidelines;

(e) Review comprehensive plans for conformance with state-wide planning goals;

(f) Coordinate planning efforts of state agencies to assure conformance with state-wide planning goals and compatibility with city and county comprehensive plans;

(g) Insure widespread citizen involvement and input in all phases of the process;

(h) Review and recommend to the Legislative Assembly the designation of areas of critical state concern;

(i) Report periodically to the Legislative Assembly and to the committee; and

(j) Perform other duties required by law.  
[1973 c.80 §§9, 11; 1977 c.664 §5]

**197.045 Powers of commission.** The commission may:

(1) Apply for and receive moneys from the Federal Government and from this state or any of its agencies or departments.

(2) Contract with any public agency for the performance of services or the exchange of employees or services by one to the other necessary in carrying out ORS 197.005 to 197.430 and 469.350.

(3) Contract for the services of and consultation with professional persons or organizations, not otherwise available through federal, state and local governmental agencies, in carrying out its duties under ORS 197.005 to 197.430 and 469.350.

(4) Perform other functions required to carry out ORS 197.005 to 197.430 and 469.350.

(5) Assist in development and preparation of model zoning, subdivision and other ordinances and regulations to guide state agen-

cies, cities, counties and special districts in implementing state-wide planning goals. [1973 c.80 §10; 1977 c.664 §6]

**197.050 Interstate agreements and compacts; commission powers.** If an interstate land conservation and development planning agency is created by an interstate agreement or compact entered into by this state, the commission shall perform the functions of this state with respect to the agreement or compact. If the functions of the interstate planning agency duplicate any of the functions of the commission under ORS 197.005 to 197.430 and 469.350, the commission may:

(1) Negotiate with the interstate agency in defining the areas of responsibility of the commission and the interstate planning agency; and

(2) Cooperate with the interstate planning agency in the performance of its functions.  
[1973 c.80 §12; 1977 c.664 §8]

197.055 [1973 c.80 §16; repealed by 1977 c.664 §42]

**197.060 Biennial report; draft submission to committee; contents.** (1) Prior to the end of each even-numbered year, the department shall prepare a written report for submission to the Legislative Assembly of the State of Oregon describing activities and accomplishments of the department, commission, state agencies, cities, counties and special districts in carrying out ORS 197.005 to 197.430 and 469.350.

(2) A draft of the report required by subsection (1) of this section shall be submitted to the committee for its review and comment at least 60 days prior to submission of the report to the Legislative Assembly. Comments of the committee shall be incorporated into the final report.

(3) Goals and guidelines adopted by the commission shall be included in the report to the Legislative Assembly submitted under subsection (1) of this section. [1973 c.80 §56; 1977 c.664 §9]

## LAND CONSERVATION AND DEVELOPMENT DEPARTMENT

**197.075 Department of Land Conservation and Development.** The Department of Land Conservation and Development is established. The department shall consist of



the Land Conservation and Development Commission, the director and their subordinate officers and employees. [1973 c.80 §4]

**197.080 Department monthly report required.** The department shall report monthly to the committee in order to keep the committee informed on progress made by the department, commission, counties and other agencies in carrying out ORS 197.005 to 197.430 and 469.350. [1973 c.80 §55; 1977 c.664 §10]

**197.085 Director; appointment; compensation and expenses.** (1) The commission shall appoint a person to serve as the Director of the Department of Land Conservation and Development. The director shall hold his office at the pleasure of the commission and his salary shall be fixed by the commission unless otherwise provided by law.

(2) In addition to his salary, the director shall be reimbursed, subject to any applicable law regulating travel and other expenses of state officers and employees, for actual and necessary expenses incurred by him in the performance of his official duties. [1973 c.80 §13]

**197.090 Duties of director.** Subject to policies adopted by the commission, the director shall:

(1) Be the administrative head of the department.

(2) Coordinate the activities of the department in its land conservation and development functions with such functions of federal agencies, other state agencies, cities, counties and special districts.

(3) Appoint, reappoint, assign and reassign all subordinate officers and employees of the department, prescribe their duties and fix their compensation, subject to the State Merit System Law.

(4) Represent this state before any agency of this state, any other state or the United States with respect to land conservation and development within this state.

(5) Provide clerical and other necessary support services for the Land Use Board of Appeals. [1973 c.80 §14; 1979 c.772 §7d]

**197.095 Land Conservation and Development Account; continuous appropriation; fees and other revenues to be deposited.** (1) There is established in the Gener-

al Fund in the State Treasury the Land Conservation and Development Account. Moneys in the account are continuously appropriated for the purpose of carrying out ORS 197.005 to 197.430 and 469.350.

(2) All fees, moneys and other revenue received by the department or the committee shall be deposited in the Land Conservation and Development Account. [1973 c.80 §15; 1977 c.664 §11]

### JOINT LEGISLATIVE COMMITTEE ON LAND USE

**197.125 Joint Legislative Committee on Land Use; executive secretary.** The Joint Legislative Committee on Land Use is established as a joint committee of the Legislative Assembly. The committee shall select an executive secretary who shall serve at the pleasure of the committee and under its direction. [1973 c.80 §22]

**197.130 Members; appointment; term; vacancies; majority vote required in actions.** (1) The Joint Legislative Committee on Land Use shall consist of four members of the House of Representatives appointed by the Speaker and three members of the Senate appointed by the President. No more than three House members of the committee shall be of the same political party. No more than two Senate members of the committee shall be of the same political party. If the Speaker of the House of Representatives or the President of the Senate is a member, either may designate from time to time an alternate from among the members of his house to exercise his powers as a member of the committee except that the alternate shall not preside if the Speaker or President is chairperson.

(2) The chairman of the House and Senate Environment and Land Use Committees of the Fifty-seventh Legislative Assembly of the State of Oregon shall be two of the members appointed under subsection (1) of this section for the period beginning with October 5, 1973.

(3) The committee has a continuing existence and may meet, act and conduct its business during sessions of the Legislative Assembly or any recess thereof, and in the interim period between sessions.

(4) The term of a member shall expire upon the convening of the Legislative Assembly in regular session next following the commencement of the member's term. When a



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vacancy occurs in the membership of the committee in the interim between sessions, until such vacancy is filled, the membership of the committee shall be deemed not to include the vacant position for the purpose of determining whether a quorum is present and a quorum is the majority of the remaining members.

(5) The committee shall select a chairman. The chairman may, in addition to his other authorized duties, approve voucher claims.

(6) Action of the committee shall be taken only upon the affirmative vote of the majority of the members of the committee. [1973 c.80 §23; 1975 c.530 §6; 1977 c.891 §8]

**197.135 Duties of committee, generally.** The committee shall:

(1) Advise the department on all matters under the jurisdiction of the department;

(2) Review and make recommendations to the Legislative Assembly on proposals for additions to or modifications of designations of activities of state-wide significance, and for designations of areas of critical state concern;

(3) Review and make recommendations to the Legislative Assembly on state-wide planning goals and guidelines approved by the commission;

(4) Study and make recommendations to the Legislative Assembly on the implementation of a program for compensation by the public to owners of lands within this state for the value of any loss of use of such lands resulting directly from the imposition of any zoning, subdivision or other ordinance or regulation regulating or restricting the use of such lands. Such recommendations shall include, but not be limited to, proposed methods for the valuation of such loss of use and proposed limits, if any, to be imposed upon the amount of compensation to be paid by the public for any such loss of use; and

(5) Make recommendations to the Legislative Assembly on any other matter relating to land use planning in Oregon. [1973 c.80 §24]

### ADVISORY COMMITTEES

**197.160 State Citizen Involvement Advisory Committee; county citizen advisory committees.** To assure widespread citizen involvement in all phases of the planning process:

(1) The commission shall appoint a State

Citizen Involvement Advisory Committee, broadly representative of geographic areas of the state and of interests relating to land uses and land use decisions, to develop a program for the commission that promotes and enhances public participation in the development of state-wide planning goals and guidelines.

(2) Within 90 days after October 5, 1973, each county governing body shall submit to the commission a program for citizen involvement in preparing, adopting and revising comprehensive plans within the county. Such program shall at least contain provision for a citizen advisory committee or committees broadly representative of geographic areas and of interests relating to land uses and land use decisions.

(3) The state advisory committee appointed under subsection (1) of this section shall review the proposed programs submitted by each county and recommend to the commission whether or not the proposed program adequately provides for public involvement in the planning process. [1973 c.80 §35]

**197.165 Local Officials Advisory Committee.** For the purpose of promoting mutual understanding and cooperation between the commission and local government in the implementation of ORS 197.005 to 197.430 and the state-wide planning goals, the commission shall appoint a Local Officials Advisory Committee. The committee shall be comprised of persons serving as city or county elected officials and its membership shall reflect the city, county and geographic diversity of the state. The committee shall advise and assist the commission on its policies and programs affecting local governments. [1977 c.664 §7]

### COMPREHENSIVE PLANNING RESPONSIBILITIES

**197.175 Cities and counties planning responsibilities; compliance with state-wide goals and guidelines.** (1) Cities and counties shall exercise their planning and zoning responsibilities, including, subject to subsection (2) of ORS 197.275, the annexation of unincorporated territory pursuant to ORS 222.111 to 222.750 and the formation of and annexation of territory to any district authorized by ORS 198.010 to 198.915 or 451.010 to 451.600, in accordance with ORS 197.005 to 197.430 and 469.350 and the state-wide plan-



ning goals approved under ORS 197.005 to 197.430 and 469.350.

(2) Pursuant to ORS 197.005 to 197.430 and 469.350, each city and county in this state shall:

(a) Prepare and adopt comprehensive plans consistent with state-wide planning goals approved by the commission; and

(b) Enact zoning, subdivision and other ordinances or regulations to implement their comprehensive plans.

(3) Notwithstanding subsection (1) of this section, the commission shall not initiate by its own action any annexation of unincorporated territory pursuant to ORS 222.111 to 222.750 or formation of and annexation of territory to any district authorized by ORS 198.010 to 198.915 or 451.010 to 451.600.

[1973 c.80 §§17, 18; 1977 c.664 §12]

**197.180 State agency planning responsibilities; certain information to be submitted to department.** (1) State agencies shall carry out their planning duties, powers and responsibilities and take actions that are authorized by law with respect to programs affecting land use in accordance with state-wide planning goals approved pursuant to ORS 197.005 to 197.430 and 469.350.

(2) Upon request by the commission but not later than January 1, 1978, each state agency shall submit to the department the following information:

(a) Agency rules and summaries of programs affecting land use;

(b) A program for coordination pursuant to paragraph (f) of subsection (2) of ORS 197.040;

(c) A program for coordination pursuant to subsection (2) of ORS 197.090; and

(d) A program for cooperation with and technical assistance to local governments.

(3) Within 90 days of receipt, the department shall review the information submitted pursuant to subsection (2) of this section and shall notify each agency if it believes the programs submitted are insufficient to assure conformance with state-wide planning goals and compatibility with city and county comprehensive plans.

(4) Within 90 days of receipt of notification specified in subsection (3) of this section, the agency shall revise the information and resubmit it to the commission for approval.

[1973 c.80 §21; 1977 c.664 §13]

**197.185 Special district planning responsibilities; agreements with cities and counties.** (1) Special districts shall exercise their planning duties, powers and responsibilities and take actions that are authorized by law with respect to programs affecting land use, including the annexation of territory to a district pursuant to ORS 198.850 to 198.865, in accordance with state-wide planning goals approved pursuant to ORS 197.005 to 197.430 and 469.350.

(2) Each special district operating within the boundaries of a city or county assigned coordinative functions under subsection (1) of ORS 197.190 shall enter into a cooperative agreement with such city or county. Such agreements shall include a listing of the tasks which the special district must complete in order to bring its plan or programs into conformity with the state-wide goals, including a generalized time schedule showing when the tasks are estimated to be completed and when a plan or programs which comply with the state-wide goals are to be adopted. In addition, a program to coordinate the development of the plan and programs of the district with other affected units of local government shall be included in the agreement. Such agreements shall be subject to review by the commission.

(3) Notwithstanding subsection (1) of this section, the commission shall not initiate by its own action any annexation of territory to a district pursuant to ORS 198.850 to 198.865.

[1973 c.80 §20; 1977 c.664 §14]

**197.190 Regional coordination of planning activities; alternatives.** (1) In addition to the responsibilities stated in ORS 197.175, each county through its governing body, shall be responsible for coordinating all planning activities affecting land uses within the county, including those of the county, cities, special districts and state agencies, to assure an integrated comprehensive plan for the entire area of the county. For purposes of this subsection, the responsibility of the county described in this subsection shall not apply to cities having a population of 300,000 or more, and such cities shall exercise, within the incorporated limits thereof, the authority vested in counties by this subsection.

(2) For the purposes of carrying out ORS 197.005 to 197.430 and 469.350, counties may voluntarily join together with adjacent counties as authorized in ORS chapter 190.



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(3) Whenever counties and cities representing 51 percent of the population in their area petition the commission for an election in their area to form a regional planning agency to exercise the authority of the counties under subsection (1) of this section in the area, the commission shall review the petition. If it finds that the area described in the petition forms a reasonable planning unit, it shall call an election in the area to form a regional planning agency. The election shall be conducted in the manner provided in ORS 255.005 to 255.035, 255.055 to 255.095 and 255.215 to 255.355. The county clerk shall be considered the election officer and the commission shall be considered the district election authority. The agency shall be considered established if the majority of votes favor the establishment.

(4) If a voluntary association of local governments adopts a resolution ratified by each participating county and a majority of the participating cities therein which authorizes the association to perform the review, advisory and coordination functions assigned to the counties under subsection (1) of this section, the association may perform such duties. [1973 c.80 §19; 1977 c.664 §15]

### STATE-WIDE GOALS AND GUIDELINES

**197.225 Preparation; adoption.** Not later than January 1, 1975, the department shall prepare and the commission shall adopt state-wide planning goals and guidelines for use by state agencies, cities, counties and special districts in preparing, adopting, revising and implementing existing and future comprehensive plans. [1973 c.80 §33]

**197.230 Considerations; priorities; finding of state-wide need required for adoption or revision of goal.** (1) In preparing, adopting and revising state-wide planning goals and guidelines, the department and the commission shall:

(a) Consider the existing comprehensive plans of cities and counties and the plans and programs affecting land use of state agencies and special districts in order to preserve functional and local aspects of land conservation and development.

(b) Give priority consideration to the following areas and activities:

(A) Those activities listed in ORS 197.400;

(B) Lands adjacent to freeway interchanges;

(C) Estuarine areas;

(D) Tide, marsh and wetland areas;

(E) Lakes and lakeshore areas;

(F) Wilderness, recreational and outstanding scenic areas;

(G) Beaches, dunes, coastal headlands and related areas;

(H) Wild and scenic rivers and related lands;

(I) Flood plains and areas of geologic hazard;

(J) Unique wildlife habitats; and

(K) Agricultural land.

(c) Make a finding of state-wide need for the adoption of any new goal or the revision of any existing goal.

(d) Design goals to allow a reasonable degree of flexibility in the application of goals by state agencies, cities, counties and special districts.

(2) Goals shall not be land management regulations for specified geographic areas established through designation of an area of critical state concern under subsection (2) of ORS 197.405. Goals shall not be direct regulation of land uses of particular properties through a program of planning and siting permits established pursuant to a designated activity of state-wide significance under subsection (1) of ORS 197.405. [1973 c.80 §34; 1977 c.664 §17]

Note: Section 18, chapter 664, Oregon Laws 1977, provides:

Sec. 18. The amendment to ORS 197.230 by section 17 of this 1977 Act shall only apply to new goals adopted or revisions of existing goals made by the commission after the effective date of this 1977 Act [July 22, 1977], based on the prospective application of statutes.

**197.235 Public hearings; notice; citizen involvement implementation; submission of proposals to commission.** (1) In preparing the state-wide planning goals and guidelines, the department shall:

(a) Hold at least 10 public hearings throughout the state, causing notice of the time, place and purpose of each such hearing to be published in a newspaper of general circulation within the area where the hearing is to be conducted not later than 30 days prior to the date of the hearing.



(b) Implement any other provision for public involvement developed by the state advisory committee under subsection (1) of ORS 197.160 and approved by the commission.

(2) Upon completion of the preparation of the proposed state-wide planning goals and guidelines, the department shall submit them to the commission for approval. [1973 c.80 §36]

**197.240 Commission action; public hearing; notice; revision; adoption.** Upon receipt of the proposed state-wide planning goals and guidelines prepared and submitted to it by the department, the commission shall:

(1) Hold at least one public hearing on the proposed state-wide planning goals and guidelines. The commission shall cause notice of the time, place and purpose of the hearings and the place where copies of the proposed goals and guidelines are available before the hearings with the cost thereof to be published in a newspaper of general circulation in the state not later than 30 days prior to the date of the hearing. The department shall supply a copy of its proposed state-wide planning goals and guidelines to the Governor, the committee, affected state agencies and special districts and to each city and county without charge. The department shall provide copies of such proposed goals and guidelines to other public agencies or persons upon request and payment of the cost of preparing the copies of the materials requested.

(2) Consider the recommendations and comments received from the public hearings conducted under subsection (1) of this section, make any revisions in the proposed state-wide planning goals and guidelines that it considers necessary and approve the proposed goals and guidelines as they may be revised by the commission. [1973 c.80 §37]

**197.245 Commission revision.** The commission may periodically revise, update and expand the initial state-wide planning goals and guidelines adopted under ORS 197.240. Such revisions, updatings or expansions shall be made in the manner provided in ORS 197.235 and 197.240. [1973 c.80 §38]

**197.250 Compliance with state-wide planning goals required.** All comprehensive plans and any zoning, subdivision and other ordinances and regulations adopted by a city or county to carry out such plans and all plans, programs or regulations affecting land use adopted by a state agency or special district shall be in conformity with the state-

wide planning goals within one year from the date such goals are approved by the commission. [1973 c.80 §32; 1977 c.664 §19]

**197.251 Compliance acknowledgment; commission review; planning extension; compliance schedule.** Upon request by a city or county the commission may grant:

(1) A compliance acknowledgment which shall be an official order of the commission formally recognizing that the comprehensive plans or zoning, subdivision or other ordinances or regulations adopted by the city or county are in compliance with the state-wide planning goals. The commission shall evaluate the plan and ordinances and either grant or deny the request within 90 days of the date the request was received by the commission unless the commission finds that due to extenuating circumstances a specified period of time greater than 90 days is required to take action on a request for a compliance acknowledgment. The commission's order granting or denying a request for compliance acknowledgment shall include a clear statement of findings which set forth the basis for the approval or denial of the request. Any request for compliance acknowledgment which has not been granted or denied within the time required under this subsection shall be considered granted. The department shall notify the Real Estate Division of any grant of compliance acknowledgment issued under this section.

(2) A planning extension, which shall be a grant of additional time for a city or county to comply with the state-wide planning goals in accordance with a compliance schedule. A compliance schedule shall be a listing of the tasks which the city or county must complete in order to bring its comprehensive plans or implementing ordinances or regulations into conformity with the state-wide goals, including a generalized time schedule showing when the tasks are estimated to be completed and when a comprehensive plan or implementing ordinances or regulations which comply with the goals are estimated to be adopted. In developing a compliance schedule, the commission shall consider the population, geographic area, resources and capabilities of the city or county. Under a compliance schedule:

(a) The city or county shall agree to complete the tasks as listed in the compliance schedule in consideration for the commission's agreement to recognize that the city or county is making satisfactory progress toward preparing and adopting a comprehensive plan or



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implementing ordinances or regulations in conformity with the state-wide planning goals.

(b) A change in circumstances subsequent to the signing of a compliance schedule which substantially impairs the ability of either party to perform as agreed therein shall constitute sufficient grounds for modification of the compliance schedule so long as reasonable efforts on progress towards compliance with the state-wide goals have been demonstrated. The compliance schedule shall remain in effect until the revision has been approved by the commission and the city or county.

(3) A temporary extension, which shall be an additional period of time not exceeding six months granted to a city or county to complete a request for a planning extension or a compliance acknowledgment. [1977 c.766 §18; 1979 c.242 §3]

**197.252 Application of state goals during period of compliance schedule; criteria for application; commission's powers cumulative.** (1) Even if a city or county has not agreed to a condition in a compliance schedule under ORS 197.251, the commission may condition the compliance schedule for the city or county to direct the city or county to apply specified goal requirements in approving or denying future land conservation and development actions if the commission finds that past approvals or denials would have constituted violations of the state-wide planning goals and:

(a) The commission finds that the past approvals or denials represent a pattern or practice of decisions which make continued utilization of the existing comprehensive plan, ordinances and regulations ineffective in achieving the state-wide planning goals through performance of the compliance schedule; or

(b) The commission finds that a past approval or denial was of more than local impact and substantially impairs the ability of the city or county to achieve the state-wide planning goals through the performance of the compliance schedule.

(2) Conditions may be imposed under this section only at the time of:

(a) Annual phased review of the satisfactory progress of the city or county;

(b) Approval of a planning assistance grant agreement with the city or county; or

(c) Revision of a compliance schedule due to delays of 60 days or more in the approved compliance date by the city or county.

(3) Nothing in this section is intended to limit or modify the powers of the commission or the board under ORS 197.251, 197.320 or sections 4 to 6, chapter 772, Oregon Laws 1979. The powers of the commission under this section are intended to be in addition to, and not in lieu of, ORS 197.005 to 197.430 (1975 Replacement Part) and 197.251 and 197.320. [1977 c.664 § 20a; 1979 c.772 §7a]

**197.254 Bar to contesting compliance acknowledgment.** (1) A state agency shall be barred, after January 1, 1978, or the date set for submission of programs by the commission as provided in subsection (2) of ORS 197.180, from contesting a request for compliance acknowledgment submitted by a city or county under ORS 197.251, if the commission finds that:

(a) The state agency has not complied with ORS 197.180; or

(b) The state agency has not coordinated its plans, programs or regulations affecting land use with the comprehensive plans or implementing ordinances or regulations of the city or county pursuant to a coordination program approved by the commission under ORS 197.180.

(2) A special district shall be barred from contesting a request for compliance acknowledgment submitted by a city or county under ORS 197.251, if the city or county assigned coordinative functions under subsection (1) of ORS 197.190 finds that:

(a) The special district has not entered into a cooperative agreement under ORS 197.185; or

(b) The special district has not coordinated its plans, programs or regulations affecting land use with the comprehensive plan or implementing ordinances or regulations of the city or county pursuant to its cooperative agreement made under ORS 197.185. [1977 c.664 §16]

**197.255 County review of comprehensive plans required; compliance advice.** Following the approval by the commission of state-wide planning goals and guidelines, each county governing body shall review all comprehensive plans for land conservation and development within the county, both those adopted and those being prepared. The county



governing body shall advise the state agency, city, county or special district preparing the comprehensive plans whether or not the comprehensive plans are in conformity with the state-wide planning goals. [1973 c.80 §39]

**197.260 County reports on comprehensive planning compliance required annually.** Upon the expiration of one year after the date of the approval of state-wide planning goals and guidelines and annually thereafter, each county governing body shall report to the commission on the status of comprehensive plans within each county. Each such report shall include:

(1) Copies of comprehensive plans reviewed by the county governing body and copies of zoning and subdivision ordinances and regulations applied to those areas within the county listed in subsection (2) of ORS 197.230.

(2) For those areas or jurisdictions within the county without comprehensive plans, a statement and review of the progress made toward compliance with the state-wide planning goals. [1973 c.80 §44]

**197.265 State compensation for costs of defending compliance actions.** (1) As used in this section, "action or suit" includes but is not limited to a proceeding under sections 4 to 6, chapter 772, Oregon Laws 1979.

(2) If any suit or action is brought against a city or county challenging any comprehensive plan, zoning, subdivision or other ordinance or regulation or action of such city or county which was adopted or taken for the primary purpose of complying with the state-wide planning goals approved under ORS 197.240 and which does in fact comply with such goals, then the commission shall pay reasonable attorney fees and court costs incurred by such city or county in the action or suit including any appeal, to the extent funds have been specifically appropriated to the commission therefor. [1977 c.898 §2; 1979 c.772 §7b]

### INTERIM COMPREHENSIVE PLANNING

**197.275 Existing plans and regulations remain in effect until revised; effect of compliance acknowledgment.** (1) Comprehensive plans and zoning, subdivision, and other ordinances and regulations adopted prior to October 5, 1973, shall remain in effect until revised under ORS 197.005 to 197.430

and 469.350. It is intended that existing planning efforts and activities shall continue and that such efforts be utilized in achieving the purposes of ORS 197.005 to 197.430 and 469.350.

(2) After the commission acknowledges a city or county comprehensive plan and implementing ordinances to be in compliance with the goals pursuant to ORS chapter 197 and any subsequent amendments to the goals, the goals shall apply to land conservation and development actions and annexations only through the acknowledged comprehensive plan and implementing ordinances unless:

(a) The acknowledged comprehensive plan and implementing ordinances do not control the action or annexation under consideration; or

(b) Substantial changes in conditions have occurred which render the comprehensive plan and implementing ordinances inapplicable to the action or annexation.

(3) As used in this section, "annexation" means the annexation of unincorporated territory by a city pursuant to ORS 222.111 to 222.750 and the formation of an annexation of territory to any district authorized by ORS 451.010 to 451.600. [1973 c.80 §40; 1977 c.664 §21]

**197.280** [1973 c.80 §41; repealed by 1977 c.664 §42 and 1977 c.766 §16]

**197.285 City and county interim comprehensive plans to comply with interim goals; state-wide planning goals and guidelines after approval.** Each city or county shall prepare and the city council or the county governing body shall adopt the comprehensive plans required under ORS 197.005 to 197.430 and 469.350 or by any other law in accordance with ORS 197.280 (1975 Replacement Part) for those plans adopted prior to the expiration of one year following the date the commission approves its state-wide planning goals and guidelines under ORS 197.240. Plans adopted by cities and counties after the expiration of one year following the date of approval of such goals and guidelines by the commission shall be designed to comply with such goals and any subsequent amendments thereto. [1973. c.80 §42]

**197.300** [1973 c.80 §51; 1977 c.664 §22; repealed by 1979 c.772 §26]

**197.305** [1973 c.80 §52; 1977 c.664 §23; repealed by 1979 c.772 §26]

**197.310** [1973 c.80 §53; 1977 c.664 §24; repealed by 1979 c.772 §26]



197.315 [1973 c.80 §54; 1977 c.664 §25; repealed by 1979 c.772 §26]

### ENFORCEMENT OF STATE-WIDE PLANNING GOALS

**197.320 Power of commission to order compliance with goals; contents of order; hearing; procedure; appeals; injunctions.** (1) The commission shall issue an order requiring a city, county, state agency or special district to take action necessary to bring its comprehensive plan or zoning, subdivision or other ordinance, regulation, plan or program into conformity with the state-wide planning goals if the commission has good cause to believe:

(a) A comprehensive plan, or zoning, subdivision or other ordinance or regulation adopted by a city, county not on a compliance schedule is not in conformity with the state-wide planning goals by the date set in ORS 197.250 for such conformity; or

(b) A plan, program or regulation affecting land use adopted by a state agency or special district is not in conformity with the state-wide planning goals by the date set in ORS 197.250 for such conformity; or

(c) A city or county is not making satisfactory progress toward performance of its compliance schedule; or

(d) A state agency is not making satisfactory progress in carrying out its coordination agreement or the requirements of ORS 197.180; or

(e) A city or county has no comprehensive plan, or zoning, subdivision or other ordinance or regulation and is not on a compliance schedule directed to developing such plans, ordinances or regulations.

(2) An order issued under subsection (1) of this section and the copy of the order mailed to the city, county, state agency or special district shall set forth:

(a) The nature of the noncompliance, including but not limited to the contents of the comprehensive plan, zoning, subdivision or other ordinance or regulation, if any, of a city or county that do not comply with state-wide planning goals or the contents of a plan, program or regulation affecting land use adopted by a state agency or special district that do not comply with state-wide planning goals;

(b) The specific lands, if any, within a city or county for which the existing plan, ordinance or regulation, if any, do not comply with the state-wide goals; and

(c) The corrective action decided upon by the commission, including the specific requirements, with which the city, county, state agency or special district must comply.

(3) An order issued under subsection (1) of this section shall state that a hearing may be requested to contest the order. The city, county, state agency or special district affected by the order or any person or group of persons substantially affected by the order may request a hearing to contest the order. The order shall become final 20 days after the mailing unless within such 20-day period the city, county, state agency or special district to which it is directed or person or group of persons substantially affected, files with the commission a request for hearing. Where a hearing is requested, the commission shall set a date for the hearing to be held within 60 days after the receipt of the request, and shall give the city, county, state agency or special district and person or group of persons substantially affected, if any, notice of the hearing at least 30 days prior thereto. Where a hearing has been requested, the order shall become final when there is no right to further hearing before the commission. The hearing and judicial review of a final order shall be governed by the provisions of ORS 183.310 to 183.500 applicable to contested cases except as otherwise stated in this section. The commission's final order shall include a clear statement of findings which set forth the basis for the order. Where a petition to review the order has been filed in the Court of Appeals, the commission shall transmit to the court the entire administrative record of the proceeding under review. Notwithstanding subsection (3) of ORS 183.482 relating to a stay of enforcement of an agency order, an appellate court, before it may stay an order of the commission, shall give due consideration to the public interest in the continued enforcement of the commission's order and may consider testimony or affidavits thereon. Upon review, an appellate court may affirm, reverse, modify or remand the order. The court shall reverse, modify or remand the order only if it finds:

(a) The order to be unlawful in substance or procedure, but error in procedure shall not be cause for reversal, modification or remand unless the court shall find that substantial



rights of any party were prejudiced thereby; or

(b) The order to be unconstitutional; or

(c) The order is invalid because it exceeds the statutory authority of the agency; or

(d) The order is not supported by substantial evidence in the whole record.

(4) If the commission finds that in the interim period during which a city, county, state agency or special district would be bringing itself into compliance with the commission's order under subsection (1) or (3) of this section it would be contrary to the public interest in the conservation or sound development of land to allow the continuation of some or all categories of land conservation and development actions in one or more specified geographic areas, it may, as part of its order, require that such actions not be taken or allowed.

(5) The commission may institute actions or proceedings for legal or equitable remedies in the Circuit Court for Marion County or in the circuit court for the county to which the commission's order is directed or within which all or a portion of the applicable city is located to enforce compliance with the provisions of any order issued under this section or to restrain violations thereof. Such actions or proceedings may be instituted without the necessity of prior agency notice, hearing and order on an alleged violation. [1977 c.664 §34; 1979 c.284 §123]

197.325 [1973 c.80 §45; repealed by 1977 c.664 §42]

197.330 [1973 c.80 §50; repealed by 1977 c.664 §42]

#### ACTIVITIES ON FEDERAL LAND

**197.390 Activities on federal land; list; permit required; enjoining violations.**

(1) The commission shall study and compile a list of all activities affecting land use planning which the state may regulate or control in any degree which occur upon federal land.

(2) No activity listed by the commission pursuant to subsection (1) of this section which the state may regulate or control which occurs upon federal land shall be undertaken without a permit issued under ORS 197.395.

(3) Any person or agency acting in violation of subsection (2) of this section may be enjoined in civil proceedings brought in the name of the State of Oregon. [1975 c.486 §2]

**197.395 Application for permit; city or county review and issuance; conditions; restrictions; review.** (1) Any person or public agency desiring to initiate an activity which the state may regulate or control which occurs upon federal land shall apply to the cities or counties in which the activity will take place for a permit. The application shall contain an explanation of the activity to be initiated, the plans for the activity and any other information required by the city or county as prescribed by rule of the commission.

(2) If the city or county finds after review of the application that the proposed activity complies with state-wide goals and the comprehensive plans of the cities or counties affected by the activity, it shall approve the application and issue a permit for the activity to the person or public agency applying therefor. Action shall be taken by the governing body within 60 days of receipt of the application, or the application is deemed approved.

(3) The city or county may prescribe and include in the permit any conditions or restrictions that it considers necessary to assure that the activity complies with state-wide goals and the comprehensive plans of the cities or counties affected by the activity.

(4) Actions pursuant to this section are subject to review under sections 4 to 6, chapter 772, Oregon Laws 1979. [1975 c.486 §3; 1977 c.664 §26; 1979 c.772 §7c]

#### ACTIVITIES OF STATE-WIDE SIGNIFICANCE

**197.400 Activities of state-wide significance; designation; effect upon state agency responsibilities.** (1) The following activities may be designated by the commission as activities of state-wide significance if the commission determines that by their nature or magnitude they should be so considered:

(a) The planning and siting of public transportation facilities.

(b) The planning and siting of public sewerage systems, water supply systems and solid waste disposal sites and facilities.

(c) The planning and siting of public schools.

(2) Nothing in ORS 197.005 to 197.430 and 469.350 supersedes any duty, power or responsibility vested by statute in any state



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agency relating to its activities described in subsection (1) of this section; except that, a state agency may neither implement any such activity nor adopt any plan relating to such an activity without the prior review and comment of the commission. [1973 c.80 §25; 1977 c.664 §27]

**197.405 Additional activities and areas of critical state concern; designation; commission recommendation; committee review; approval by Legislative Assembly.** (1) In addition to the activities of state-wide significance that are designated by the commission under ORS 197.400, the commission may recommend to the committee the designation of additional activities of state-wide significance. Each such recommendation:

(a) Shall specify the reasons for the implementation of state regulations controlling the planning and siting of the activity recommended for designation;

(b) Shall include a brief summary of the existing programs and regulations of state and local agencies applicable to the activity recommended for designation;

(c) May describe the local permit programs or regulation, if any, that would remain matters of local concern not subject to the proposed permit program; and

(d) May provide varying regulations and permit criteria for different geographic areas of the state reflecting differing conditions and effects in such areas of the activity.

(2) The commission may recommend to the committee the designation of areas of critical state concern. Each such recommendation:

(a) Shall specify the reasons for the implementation of additional state regulations for the described geographic area;

(b) Shall include a brief summary of the existing programs and regulations of state and local agencies applicable to the area;

(c) May include a management plan for the area indicating the programs and regulations of state and local agencies, if any, unaffected by the proposed state regulations for the area;

(d) May establish permissible use limitations for all or part of the area;

(e) Shall locate a boundary describing the area; and

(f) May designate permissible use standards for all or part of the lands within the area or establish standards for issuance or

denial of designated state or local permits regulating specified uses of lands in the area, or both.

(3) The commission may act under subsections (1) and (2) of this section on its own motion or upon the recommendation of a state agency, city, county or special district. If the commission receives a recommendation from a state agency, city, county or special district and finds the proposed activity or area to be unsuitable for designation, it shall notify the state agency, city, county or special district of its decision and its reasons therefor.

(4) Immediately following its decision to favorably recommend to the Legislative Assembly the designation of an additional activity of state-wide significance or the designation of an area of critical state concern, the commission shall submit the proposed designation accompanied by the supporting materials described in subsections (1) and (2) of this section to the committee for its review.

(5) No proposed designation under subsection (1) or (2) of this section shall take effect unless it has first been submitted to the committee under subsection (4) of this section and has been approved by the Legislative Assembly. The Legislative Assembly may adopt, revise or reject the proposed designation. [1973 c.80 §26; 1977 c.664 §28]

**197.410 Planning and siting permit required; enjoining violations.** (1) No project constituting an activity of state-wide significance shall be undertaken without a planning and siting permit issued under ORS 197.415.

(2) No use or activity subjected to state regulations required or allowed for a designated area of critical state concern shall be undertaken except in accordance with the applicable state regulations.

(3) Any person or agency acting in violation of subsection (1) or (2) of this section may be enjoined in civil proceedings brought in the name of the county or the State of Oregon. [1973 c.80 §30; 1977 c.664 §29]

**197.415 Planning and siting permits required; application; city, county, state agency review and recommendation; issuance; conditions; restrictions.** (1) No proposed project constituting an activity of state-wide significance may be initiated by any person or public agency without a planning and siting permit issued by the commission therefor.



(2) Any person or public agency desiring to initiate a project constituting an activity of state-wide significance shall apply to the department for a planning and siting permit for such project. The application shall contain the plans for the project and the manner in which such project has been designed to meet the state regulations for the activity and the comprehensive plans for the city and county within which the project is proposed, and any other information required by the commission as prescribed by rule of the commission.

(3) The department shall transmit copies of the application to affected county, city and state agencies for their review and recommendation.

(4) The county and city governing bodies and the state agencies shall review an application transmitted to it under subsection (3) of this section and shall, within 30 days after the date of the receipt of the application, submit their recommendations on the application to the commission.

(5) If the commission finds after review of the application and the comments submitted by the county or city governing body and state agencies that the proposed project complies with the state regulations for the activity of state-wide significance and the comprehensive plan for the city and county, it shall approve the application and issue a planning and siting permit for the proposed project to the person or public agency applying therefor. Action shall be taken by the commission within 30 days of the receipt of the recommendation of the county, city and state agencies.

(6) The commission may prescribe and include in the planning and siting permit such conditions or restrictions that it considers necessary to assure that the proposed project complies with the state regulations for the activity of state-wide significance and the comprehensive plans for the city and the county. [1973 c.80 §27; 1977 c.664 §30]

**197.420 Joint application and permit where two or more permits required for activity.** If the activity requiring a planning and siting permit under ORS 197.415 also requires any other permit from any state agency, the commission, with the cooperation and concurrence of the other agency, may provide a joint application form and permit to satisfy both the requirements of ORS 197.005 to 197.430 and 469.350 and any other requirements set by statute or by rule of the state agency. [1973 c.80 §28; 1977 c.664 §31]

**197.425 Binding letter of interpretation by commission; committee consultation required; request form.** (1) If any person or public agency is in doubt whether a proposed development project constitutes an activity of state-wide significance, the person or public agency may request a determination from the commission on the question. Within 60 days after the date of the receipt by it of such a request, the commission, with the advice of the city and county governing bodies for the area in which such activity is proposed, shall issue a binding letter of interpretation with respect to the proposed project.

(2) Requests for determinations under this section shall be made to the commission in writing and in such form and contain such information as may be prescribed by the commission. [1973 c.80 §29; 1977 c.664 §32]

**197.430 Enforcement powers.** If the county governing body or the commission determines the existence of an alleged violation under ORS 197.410, it may:

(1) Investigate, hold hearings, enter orders and take action that it deems appropriate under ORS 197.005 to 197.430 and 469.350, as soon as possible.

(2) For the purpose of investigating conditions relating to the violation, through its members or its duly authorized representatives, enter at reasonable times upon any private or public property.

(3) Conduct public hearings.

(4) Publish its findings and recommendations as they are formulated relative to the violation.

(5) Give notice of any order relating to a particular violation of the state regulations for the activity or area involved, a particular violation of the terms or conditions of a planning and siting permit for the activity or a particular violation of ORS 197.005 to 197.430 and 469.350 by mailing notice to the person or public body conducting or proposing to conduct the project affected in the manner provided by ORS 183.310 to 183.500. [1973 c.80 §31; 1977 c.664 §33]

**197.705** [1973 c.482 §1; repealed by 1977 c.665 §24]

**197.710** [1973 c.482 §3; repealed by 1977 c.665 §24]

**197.715** [1973 c.482 §2; repealed by 1977 c.665 §24]

**197.725** [1973 c.482 §4; repealed by 1977 c.665 §24]

**197.730** [1973 c.482 §6; repealed by 1977 c.665 §24]

**197.735** [1973 c.482 §7; repealed by 1977 c.665 §24]

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197.740 [1973 c.482 §8; repealed by 1977 c.665 §24]

197.750 [1973 c.482 §5; repealed by 1977 c.665 §24]

197.755 [1973 c.482 §9; repealed by 1977 c.665 §24]

197.760 [1973 c.482 §9a; repealed by 1977 c.665 §24]

197.765 [1973 c.482 §2a; repealed by 1977 c.665 §24]

197.775 [1973 c.482 §11; repealed by 1977 c.665 §24]

197.780 [1973 c.482 §12; repealed by 1977 c.665 §24]

197.785 [1973 c.482 §13; repealed by 1977 c.665 §24]

197.790 [1973 c.482 §14; repealed by 1977 c.665 §24]

197.795 [1973 c.482 §10; repealed by 1977 c.665 §24]

**CERTIFICATE OF LEGISLATIVE COUNSEL**

Pursuant to ORS 173.170, I, Thomas G. Clifford, Legislative Counsel, do hereby certify that I have compared each section printed in this chapter with the original section in the enrolled bill, and that the sections in this chapter are correct copies of the enrolled sections, with the exception of the changes in form permitted by ORS 173.160 and other changes specifically authorized by law.

Done at Salem, Oregon,  
October 1, 1979.

Thomas G. Clifford  
Legislative Counsel



## Chapter 215

### 1979 REPLACEMENT PART

### County Planning; Zoning; Housing Codes

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Airport zoning, Ch. 492	County forests and parks, 275.320 to 275.370
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**215.010 Definitions for ORS 215.020 to 215.190 and 215.402 to 215.422.** As used ORS 215.020 to 215.190 and 215.402 to 215.422, the terms defined in ORS 92.010 shall have the meanings given therein. [Amended by 1955 c.756 §25; 1963 c.619 §1 (1)]

**215.020 Authority to establish county planning commissions.** (1) The governing body of any county may create and provide for the organization and operations of one or more county planning commissions.

(2) This section shall be liberally construed and shall include the authority to create more than one planning commission, or subcommittee of a commission, for a county or the use of a joint planning commission or other intergovernmental agency for planning as authorized by ORS 190.003 to 190.110.

[Amended by 1973 c.552 §1; 1975 c.767 §15]

**215.030 Membership of planning commission.** (1) The county planning commission shall consist of five, seven or nine members appointed by the governing body for four-year terms, or until their respective successors are appointed and qualified; provided that in the first instance the terms of the initial members shall be staggered for one, two, three and four years.

(2) A commission member may be removed by the governing body, after hearing, for misconduct or nonperformance of duty.

(3) Any vacancy on the commission shall be filled by the governing body for the unexpired term.

(4) Members of the commission shall serve without compensation other than reimbursement for duly authorized expenses.

(5) Members of a commission shall be residents of the various geographic areas of the county. No more than two voting members shall be engaged principally in the buying, selling or developing of real estate for profit, as individuals, or be members of any partnership or officers or employees of any corporation that is engaged principally in the buying, selling or developing of real estate for profit. No more than two voting members shall be engaged in the same kind of occupation, business, trade or profession.

(6) The governing body may designate one

or more officers of the county to be nonvoting members of the commission.

(7) Except for subsection (5) of this section, the governing body may provide by ordinance for alternative rules to those specified in this section. [Amended by 1963 c.619 §2; 1973 c.552 §2; 1977 c.766 §1]

**215.035 Planning commission member conflict of interest activities.** A member of a planning commission shall not participate in any commission proceeding or action in which any of the following has a direct or substantial financial interest: The member or his spouse, brother, sister, child, parent, father-in-law, mother-in-law, partner, any business in which he is then serving or has served within the previous two years, or any business with which he is negotiating for or has an arrangement or understanding concerning prospective partnership or employment. Any actual or potential interest shall be disclosed at the meeting of the commission where the action is being taken. [1973 c.552 §10]

**215.040** [Amended by 1973 c.552 §3; repealed by 1977 c.766 §16]

**215.042 County to appoint planning director; term and duties of director.** (1) The governing body of each county shall designate an individual to serve as planning director for the county responsible for administration of planning. The governing body shall provide employees as necessary to assist the director in carrying out his responsibilities. The director shall be the chief administrative officer in charge of the planning department of the county, if one is created.

(2) The director shall provide assistance, as requested, to the planning commission and shall coordinate the functions of the commission with other departments, agencies and officers of the county that are engaged in functions related to planning for the use of lands within the county.

(3) The director shall serve at the pleasure of the governing body of the county. [1973 c.552 §9]

**215.046** [1973 c.552 §11; repealed by 1977 c.766 §16]

**215.050 Comprehensive planning, zoning and subdivision ordinances.** (1) The county governing body shall adopt and may from time to time revise a comprehensive plan and zoning, subdivision and other ordinances applicable to all of the land in the county. The



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plan and related ordinances may be adopted and revised part by part or by geographic area.

(2) Zoning, subdivision or other ordinances or regulations and any revisions or amendments thereof shall be designed to implement the adopted county comprehensive plan.

(3) Comprehensive plans adopted by the county governing body after the expiration of one year after the date of the approval of any state-wide planning goals under ORS 197.240 shall be in conformity with the state-wide planning goals and any subsequent revisions or amendments thereof. [Amended by 1955 c.439 §2; 1963 c.619 §3; 1973 c.552 §4; 1977 c.766 §2]

215.055 [1955 c.439 §3; 1963 c.619 §4; 1971 c.13 §2; 1971 c.739 §1; 1973 c.80 §43; 1975 c.153 §1; repealed by 1977 c.766 §16]

**215.060 Procedure for action on plan; notice; hearing.** Action by the governing body of a county regarding the plan shall have no legal effect unless the governing body first conducts one or more public hearings on the plan and unless 10 days' advance public notice of each of the hearings is published in a newspaper of general circulation in the county or, in case the plan as it is to be heard concerns only part of the county, is so published in the territory so concerned and unless a majority of the members of the governing body approves the action. The notice provisions of this section shall not restrict the giving of notice by other means, including mail, radio and television. [Amended by 1963 c.619 §5; 1967 c.589 §1; 1973 c.552 §6]

215.070 [Repealed by 1963 c.619 §16]

**215.080 Power to enter upon land.** The commission, and any of its members, officers and employees, in the performance of their functions, may enter upon any land and make examinations and surveys and place and maintain the necessary monuments and markers thereon.

**215.090 Information made available to commission.** Public officials, departments and agencies, having information, maps or other data deemed by the planning commission pertinent to county planning shall make such information available for the use of the commission. [Amended by 1977 c.766 §3]

**215.100 Cooperation with other agencies.** The county planning commission shall advise and cooperate with other planning commissions within the state, and shall upon

request, or on its own initiative, furnish advice or reports to any city, county, officer or department on any problem comprehended in county planning.

215.104 [1955 c.439 §4; 1963 c.619 §6; 1967 c.589 §2; 1973 c.552 §7; repealed by 1977 c.766 §16]

215.108 [1955 c.439 §5; 1961 c.607 §1; repealed by 1963 c.619 §16]

**215.110 Recommendation of ordinances to implement plan; content; enactment; referral; retroactivity prohibited.** (1) A planning commission may recommend to the governing body ordinances intended to implement part or all of the comprehensive plan. The ordinances may provide, among other things, for:

(a) Zoning;

(b) Official maps showing the location and dimensions of, and the degree of permitted access to, existing and proposed thoroughfares, easements and property needed for public purposes;

(c) Preservation of the integrity of the maps by controls over construction, by making official maps parts of county deed records, and by other action not violative of private property rights;

(d) Conservation of the natural resources of the county;

(e) Controlling subdivision and partitioning of land;

(f) Renaming public thoroughfares;

(g) Protecting and assuring access to incident solar energy; and

(h) Numbering property.

(2) The governing body may enact, amend or repeal ordinances to assist in carrying out a comprehensive plan. If an ordinance is recommended by a planning commission, the governing body may make any amendments to the recommendation required in the public interest. If an ordinance is initiated by the governing body, it shall, prior to enactment, request a report and recommendation regarding the ordinance from the planning commission, if one exists, and allow a reasonable time for submission of the report and recommendation.

(3) The governing body may refer to the legal voters of the county for their approval or rejection an ordinance or amendments thereto for which this section provides. If only a part of the county is affected, the ordinance or amendment may be referred to that part only.



(4) An ordinance enacted by authority of this section may prescribe fees and appeal procedures necessary or convenient for carrying out the purposes of the ordinance.

(5) An ordinance enacted by authority of this section may prescribe limitations designed to encourage and protect the installation and use of solar energy systems.

(6) No retroactive ordinance shall be enacted under the provisions of this section.

[Amended by 1963 c.619 §7; 1973 c.696 §22; 1975 c.153 §2; 1977 c.766 §4; 1979 c.671 §2]

215.120 [Amended by 1957 c.568 §2; repealed by 1963 c.619 §16]

215.124 [1955 c.683 §§2, 4; 1957 c.568 §3; repealed by 1959 c.387 §1]

215.126 [1955 c.683 §3; 1957 c.568 §1; 1959 c.387 §2; repealed by 1963 c.619 §16]

**215.130 Application of ordinances.** (1) Any legislative ordinance relating to land use planning or zoning shall be a local law within the meaning of, and subject to, ORS 250.155 to 250.235.

(2) An ordinance designed to carry out a county comprehensive plan and a county comprehensive plan shall apply to:

(a) The area within the county also within the boundaries of a city as a result of extending the boundaries of the city or creating a new city unless, or until the city has by ordinance or other provision provided otherwise; and

(b) The area within the county also within the boundaries of a city if the governing body of such city adopts an ordinance declaring the area within its boundaries subject to the county's land use planning and regulatory ordinances, officers and procedures and the county governing body consents to the conferral of jurisdiction.

(3) An area within the jurisdiction of city land use planning and regulatory provisions that is withdrawn from the city or an area within a city that disincorporates shall remain subject to such plans and regulations which shall be administered by the county until the county provides otherwise.

(4) County ordinances designed to implement a county comprehensive plan shall apply to publicly owned property.

(5) The lawful use of any building, structure or land at the time of the enactment or amendment of any zoning ordinance or regulation may be continued. Alteration of any

such use may be permitted to reasonably continue the use. Alteration of any such use shall be permitted when necessary to comply with any lawful requirement for alteration in the use. A change of ownership or occupancy shall be permitted.

(6) Restoration or replacement of any use described in subsection (5) of this section may be permitted when the restoration is made necessary by fire, other casualty or natural disaster. Restoration or replacement shall be commenced within one year from the occurrence of the fire, casualty or natural disaster.

(7) Any use described in subsection (5) of this section may not be resumed after a period of interruption or abandonment unless the resumed use conforms with the requirements of zoning ordinances or regulations applicable at the time of the proposed resumption.

(8) Any proposal for the alteration of a use under subsection (5) of this section, except an alteration necessary to comply with a lawful requirement, for the restoration or replacement of a use under subsection (6) of this section or for the resumption of a use under subsection (7) of this section shall be considered a contested case under subsection (1) of ORS 215.402 subject to such procedures as the governing body may prescribe under ORS 215.412.

(9) As used in this section, "alteration" of a nonconforming use includes:

(a) A change in the use of no greater adverse impact to the neighborhood; and

(b) A change in the structure or physical improvements of no greater adverse impact to the neighborhood. [Amended by 1961 c.607 §2; 1963 c.577 §4; 1963 c.619 §9; 1969 c.460 §1; 1973 c.503 §2; 1977 c.766 §5; 1979 c.190 §406; 1979 c.610 §1]

215.140 [Repealed by 1963 c.619 §16]

215.150 [Amended by 1955 c.439 §8; repealed by 1963 c.619 §16]

215.160 [Repealed by 1963 c.619 §16]

**215.170 Authority of incorporated cities in unincorporated area.** The powers of an incorporated city to control subdivision and other partitioning of land and to rename thoroughfares in adjacent unincorporated areas shall continue unimpaired by ORS 215.010 to 215.190 and 215.402 to 215.422 until the county governing body that has jurisdiction over the area adopts regulations for controlling subdivision there. Any part of the area subject to the county regulations



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shall cease to be subject to the two powers of the city. [Amended by 1963 c.619 §10]

215.180 [1955 c.439 §6; 1963 c.619 §11; repealed by 1977 c.766 §16]

**215.185 Remedies for unlawful structures or land use.** In case a building or other structure is, or is proposed to be, located, constructed, maintained, repaired, altered, or used, or any land is, or is proposed to be, used, in violation of an ordinance or regulation designed to implement a comprehensive plan, the governing body of the county or a person whose interest in real property in the county is or may be affected by the violation, may, in addition to other remedies provided by law, institute injunction, mandamus, abatement, or other appropriate proceedings to prevent, temporarily or permanently enjoin, abate, or remove the unlawful location, construction, maintenance, repair, alteration, or use. When a temporary restraining order is granted in a suit instituted by a person who is not exempt from furnishing bonds or undertakings under ORS 22.010, the person shall furnish undertaking as provided in ORS 32.010 to 32.060.

[1955 c.439 §7; 1963 c.619 §12; 1977 c.766 §6]

**215.190 Violation of regulations.** No person shall locate, construct, maintain, repair, alter, or use a building or other structure or use or transfer land in violation of an ordinance or regulation authorized by ORS 215.010 to 215.190 and 215.402 to 215.422.

[1955 c.439 §9; 1963 c.619 §13]

215.200 [1957 s.s. c.11 §1; renumbered 215.285]

### AGRICULTURAL LAND USE

**215.203 Adoption of zoning ordinances establishing farm use zones; definitions for ordinances.** (1) Zoning ordinances may be adopted to zone designated areas of land within the county as exclusive farm use zones. Land within such zones shall be used exclusively for farm use except as otherwise provided in ORS 215.213. Farm use zones shall be established only when such zoning is consistent with the comprehensive plan.

(2) (a) As used in this section, "farm use" means the current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting and selling crops or by the feeding, breeding, management and sale of, or the produce of, livestock, poultry, fur-bearing animals or honeybees or for dairying and the sale of dairy products or any other

agricultural or horticultural use or animal husbandry or any combination thereof. "Farm use" includes the preparation and storage of the products raised on such land for man's use and animal use and disposal by marketing or otherwise. It does not include the use of land subject to the provisions of ORS chapter 321, except land used exclusively for growing cultured Christmas trees as defined in subsection (3) of this section.

(b) "Current employment" of land for farm use includes (A) land subject to the soil-bank provisions of the Federal Agricultural Act of 1956, as amended (P. L. 84-540, 70 Stat. 188); (B) land lying fallow for one year as a normal and regular requirement of good agricultural husbandry; (C) land planted in orchards or other perennials prior to maturity; (D) any land constituting a woodlot of less than 20 acres contiguous to and owned by the owner of land specially assessed at true cash value for farm use even if the land constituting the woodlot is not utilized in conjunction with farm use; (E) wasteland, in an exclusive farm use zone, dry or covered with water, lying in or adjacent to and in common ownership with a farm use land and which is not currently being used for any economic farm use; (F) land under dwellings customarily provided in conjunction with the farm use in an exclusive farm use zone; and (G) land under buildings supporting accepted farm practices.

(c) As used in this subsection, "accepted farming practice" means a mode of operation that is common to farms of a similar nature, necessary for the operation of such farms to obtain a profit in money, and customarily utilized in conjunction with farm use.

(3) "Cultured Christmas trees" means trees:

(a) Grown on lands used exclusively for that purpose, capable of preparation by intensive cultivation methods such as plowing or turning over the soil;

(b) Of a species for which the Department of Revenue requires a "Report of Christmas Trees Harvested" for purposes of ad valorem taxation;

(c) Managed to produce trees meeting U.S. No. 2 or better standards for Christmas trees as specified by the Agriculture Marketing Services of the United States Department of Agriculture; and

(d) Evidencing periodic maintenance practices of shearing for Douglas fir and pine



species, weed and brush control and one or more of the following practices: Basal pruning, fertilizing, insect and disease control, stump culture, soil cultivation, irrigation.

[1963 c.577 §2; 1963 c.619 §1(2), (3); 1967 c.386 §1; 1973 c.503 §3; 1975 c.210 §1; 1977 c.766 §7; 1977 c.893 §17a; 1979 c.480 §1]

Note: Section 5, chapter 480, Oregon Laws 1979, provides:

Sec. 5. The amendments to ORS 215.203, 215.213, 308.372 and 380.390 by sections 1 to 4 of this Act apply to assessment years beginning on or after January 1, 1980.

215.205 [1957 s.s. c.11 §2; renumbered 215.295]

215.210 [Amended by 1955 c.652 §6; renumbered 215.305]

**215.213 Nonfarm uses permitted within farm use zones.** (1) The following uses may be established in any area zoned for exclusive farm use:

- (a) Public or private schools.
- (b) Churches.
- (c) The propagation or harvesting of a forest product.
- (d) Utility facilities necessary for public service, except commercial facilities for the purpose of generating power for public use by sale.
- (e) The dwellings and other buildings customarily provided in conjunction with farm use.
- (f) Operations for the exploration of geothermal resources as defined by ORS 522.005.
- (g) A site for the disposal of solid waste that has been ordered to be established by the Environmental Quality Commission under ORS 459.049, together with equipment, facilities or buildings necessary for its operation.
- (2) The following nonfarm uses may be established, subject to the approval of the governing body or its designate, in any area zoned for exclusive farm use:
  - (a) Commercial activities that are in conjunction with farm use.
  - (b) Operations conducted for the mining and processing of geothermal resources as defined by ORS 522.005 or exploration, mining and processing of aggregate and other mineral resources or other subsurface resources.
  - (c) Private parks, playgrounds, hunting and fishing preserves and campgrounds.

(d) Parks, playgrounds or community centers owned and operated by a governmental agency or a nonprofit community organization.

(e) Golf courses.

(f) Commercial utility facilities for the purpose of generating power for public use by sale.

(g) Personal-use airports for airplanes and helicopter pads, including associated hangar, maintenance and service facilities. A personal-use airport as used in this section means an airstrip restricted, except for aircraft emergencies, to use by the owner, and, on an infrequent and occasional basis, by his invited guests, and by commercial aviation activities in connection with agricultural operations. No aircraft may be based on a personal-use airport other than those owned or controlled by the owner of the airstrip. Exceptions to the activities permitted under this definition may be granted through waiver action by the Aeronautics Division in specific instances. A personal-use airport lawfully existing as of September 13, 1975, shall continue to be permitted subject to any applicable regulations of the Aeronautics Division.

(h) Home occupations carried on by the resident as an accessory use within dwellings or other buildings referred to in subparagraph (F) or (G) of paragraph (b) of subsection (2) of ORS 215.203.

(i) A facility for the primary processing of forest products, provided that such facility is found to not seriously interfere with accepted farming practices and is compatible with farm uses described in subsection (2) of ORS 215.203. Such a facility may be approved for a one-year period which is renewable. These facilities are intended to be only portable or temporary in nature. The primary processing of a forest product, as used in this section, means the use of a portable chipper or stud mill or other similar methods of initial treatment of a forest product in order to enable its shipment to market. Forest products, as used in this section, means timber grown upon a parcel of land or contiguous land where the primary processing facility is located.

(j) The boarding of horses for profit.

(k) A site for the disposal of solid waste approved by the governing body of a city or county or both and for which a permit has been granted under ORS 459.245 by the Department of Environmental Quality together



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with equipment, facilities or buildings necessary for its operation.

(3) Single-family residential dwellings, not provided in conjunction with farm use, may be established, subject to approval of the governing body or its designate in any area zoned for exclusive farm use upon a finding that each such proposed dwelling:

(a) Is compatible with farm uses described in subsection (2) of ORS 215.203 and is consistent with the intent and purposes set forth in ORS 215.243; and

(b) Does not interfere seriously with accepted farming practices, as defined in paragraph (c) of subsection (2) of ORS 215.203, on adjacent lands devoted to farm use; and

(c) Does not materially alter the stability of the overall land use pattern of the area; and

(d) Is situated upon generally unsuitable land for the production of farm crops and livestock, considering the terrain, adverse soil or land conditions, drainage and flooding, vegetation, location and size of the tract; and

(e) Complies with such other conditions as the governing body or its designate considers necessary. [1963 c.577 §3; 1963 c.619 §1a; 1969 c.258 §1; 1973 c.503 §4; 1975 c. 551 §1; 1975 c.552 §32; 1977 c.766 §8; 1977 c.788 §2; 1979 c.480 §6; 1979 c.773 §10]

Note: See note after 215.203.

Note: Section 3, chapter 577, and section 1a, chapter 619, Oregon Laws 1963, have been compiled as 215.213 because they were virtually identical. Section 3, chapter 577, used the term "properties" instead of "facilities" in subsection (5) of 215.213 (1963 Replacement Part).

**215.214 Effect of solid waste disposal site classification on compliance with agricultural land goals.** The Land Conservation and Development Commission shall not consider the provisions of paragraph (k) of subsection (2) of ORS 215.213 as being consistent with any state-wide planning goal relating to the preservation of agricultural lands for the purpose of exempting a unit of local government from applying that goal to agricultural lands. [1979 c.773 §11]

**215.215 Reestablishment of nonfarm use.** (1) Notwithstanding subsection (4) of ORS 215.130, if a nonfarm use exists in an exclusive farm use zone and is unintentionally destroyed by fire, other casualty or natural disaster, the county may allow by its zoning regulations such use to be reestablished to its previous nature and extent, but the reestablishment shall meet all other building, plum-

bing, sanitation and other codes, ordinances and permit requirements.

(2) Consistent with ORS 215.243, the county governing body may zone for the appropriate nonfarm use one or more lots or parcels in the interior of an exclusive farm use zone if the lots or parcels were physically developed for the nonfarm use prior to the establishment of the exclusive farm use zone. [1977 c.664 §41]

215.220 [Repealed by 1963 c.619 §16]

**215.223 Procedure for adopting zoning ordinances; notice.** (1) No zoning ordinance enacted by the county governing body may have legal effect unless prior to its enactment the governing body or the planning commission conducts one or more public hearings on the ordinance and unless 10 days' advance public notice of each hearing is published in a newspaper of general circulation in the county or, in case the ordinance applies to only a part of the county, is so published in that part of the county.

(2) The notice provisions of this section shall not restrict the giving of notice by other means, including mail, radio and television.

(3) In effecting a zone change the proceedings for which are commenced at the request of a property owner, the governing body shall in addition to other notice give individual notice of the request by mail to the record owners of property within 250 feet of the property for which a zone change has been requested. The failure of the property owner to receive the notice described shall not invalidate any zone change. [1963 c.619 §8; 1967 c.589 §3]

215.230 [Repealed by 1963 c.619 §16]

**215.233 Validity of ordinances and development patterns adopted before September 2, 1963.** Nothing in ORS 215.010, 215.030, 215.050, 215.060 and 215.110 to 215.213, 215.223 and this section shall impair the validity of ordinances enacted prior to September 2, 1963. All development patterns made and adopted prior to that time shall be deemed to meet the requirements of ORS 215.010, 215.030, 215.050, 215.060 and 215.110 to 215.213, 215.223 and this section concerning comprehensive plans. [1963 c.619 §14; 1971 c.13 §3]

215.240 [Repealed by 1963 c.619 §16]



**215.243 Agricultural land use policy.** The Legislative Assembly finds and declares that:

(1) Open land used for agricultural use is an efficient means of conserving natural resources that constitute an important physical, social, aesthetic and economic asset to all of the people of this state, whether living in rural, urban or metropolitan areas of the state.

(2) The preservation of a maximum amount of the limited supply of agricultural land is necessary to the conservation of the state's economic resources and the preservation of such land in large blocks is necessary in maintaining the agricultural economy of the state and for the assurance of adequate, healthful and nutritious food for the people of this state and nation.

(3) Expansion of urban development into rural areas is a matter of public concern because of the unnecessary increases in costs of community services, conflicts between farm and urban activities and the loss of open space and natural beauty around urban centers occurring as the result of such expansion.

(4) Exclusive farm use zoning as provided by law, substantially limits alternatives to the use of rural land and, with the importance of rural lands to the public, justifies incentives and privileges offered to encourage owners of rural lands to hold such lands in exclusive farm use zones. [1973 c.503 §1]

215.250 [Repealed by 1973 c.619 §16]

**215.253 Prohibition against restrictive local ordinances affecting farm use zones; exemption for exercise of governmental power to protect public health, safety and welfare.** (1) No state agency, city, county or political subdivision of this state may exercise any of its powers to enact local laws or ordinances or impose restrictions or regulations affecting any farm use land situated within an exclusive farm use zone established under ORS 215.203 in a manner that would unreasonably restrict or regulate farm structures or that would unreasonably restrict or regulate accepted farming practices because of noise, dust, odor or other materials carried in the air or other conditions arising therefrom if such conditions do not extend beyond the boundaries of the exclusive farm use zone within which they are created in such manner as to interfere with the use of adjacent lands. "Accepted farming practice" as

used in this subsection shall have the meaning set out in ORS 215.203.

(2) Nothing in this section is intended to limit or restrict the lawful exercise by any state agency, city, county or political subdivision of its power to protect the health, safety and welfare of the citizens of this state. [1973 c.503 §8]

215.260 [Amended by 1955 c.652 §3; repealed by 1957 s.s. c.11 §4 (215.261 enacted in lieu of 215.260)]

215.261 [1957 s.s. c.11 §5 (enacted in lieu of 215.260); repealed by 1963 c.619 §16]

**215.263 Review of land divisions in exclusive farm use zones; criteria for approval; exemptions.** (1) Any proposed division of land included within an exclusive farm use zone resulting in the creation of one or more parcels of land of 10 or more acres in size may be reviewed and approved or disapproved by the governing body of the county in which such land is situated. The governing body of a county by ordinance or regulation may require such prior review and approval for such divisions of land within exclusive farm use zones established within the county.

(2) Any proposed division of land included within an exclusive farm use zone resulting in the creation of one or more parcels of land of less than 10 acres in size shall be reviewed and approved or disapproved by the governing body of the county within which such land is situated.

(3) If the governing body of a county initiates a review as provided in subsection (1) or (2) of this section, it shall not approve any proposed division of land unless it finds that the proposed division of land is in conformity with the legislative intent set forth in ORS 215.243.

(4) This section shall not apply to the creation or sale of cemetery lots, if a cemetery is within the boundaries designated for a farm use zone at the time the zone is established.

(5) This section shall not apply to divisions of land resulting from lien foreclosures or divisions of land resulting from foreclosure of recorded contracts for the sale of real property. [1973 c.503 §9; 1977 c.766 §9; 1979 c.46 §2]

215.270 [Repealed by 1963 c.619 §16]

**215.273 Applicability to nuclear and thermal energy council power plant siting determinations.** Nothing in ORS 118.155, 215.130, 215.203, 215.213, 215.243 to 215.273,



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308.395 to 308.401 and 316.081 is intended to affect the authority of the Nuclear and Thermal Energy Council in determining suitable sites for the issuance of site certificates for thermal power plants, as authorized under ORS 469.300 to 469.570. [1973 c.503 §16]

215.280 [Repealed by 1963 c.619 §16]

215.285 [Formerly 215.200; repealed by 1971 c.13 §1]

215.290 [Repealed by 1963 c.619 §16]

215.295 [Formerly 215.205; repealed by 1971 c.13 §1]

215.300 [Repealed by 1963 c.619 §16]

215.305 [Formerly 215.210; repealed by 1971 c.13 §1]

215.310 [Repealed by 1971 c.13 §1]

215.320 [Repealed by 1971 c.13 §1]

215.325 [1953 c.662 §6; 1963 c.9 §4; repealed by 1971 c.13 §1]

215.330 [Repealed by 1971 c.13 §1]

215.340 [Repealed by 1971 c.13 §1]

215.350 [Amended by 1953 c.662 §7; repealed by 1971 c.13 §1]

215.360 [Amended by 1953 c.662 §7; subsection (2) enacted as 1953 c.662 §1; repealed by 1971 c.13 §1]

215.370 [Repealed by 1971 c.13 §1]

215.380 [Amended by 1955 c.652 §4; repealed by 1971 c.13 §1]

215.390 [Repealed by 1971 c.13 §1]

215.395 [1953 c.662 §3; 1955 c.652 §5; repealed by 1971 c.13 §1]

215.398 [1955 c.652 §2; repealed by 1971 c.13 §1]

215.400 [Repealed by 1971 c.13 §1]

### PLANNING AND ZONING HEARINGS AND REVIEW

**215.402 Definitions for ORS 215.402 to 215.422.** As used in ORS 215.402 to 215.422 unless the context requires otherwise:

(1) "Contested case" means a proceeding in which the legal rights, duties or privileges of specific parties under general rules or policies provided under ORS 215.010 to 215.213, 215.215 to 215.233 and 215.402 to 215.422, or any ordinance, rule or regulation adopted pursuant thereto, are required to be determined only after a hearing at which specific parties are entitled to appear and be heard.

(2) "Hearing" means a quasi-judicial hearing, authorized or required by the ordinances and regulations of a county adopted pursuant

to ORS 215.010 to 215.213, 215.215 to 215.233 and 215.402 to 215.422:

(a) To determine in accordance with such ordinances and regulations if a permit shall be granted or denied; or

(b) To determine a contested case.

(3) "Hearings officer" means a planning and zoning hearings officer appointed or designated by the governing body of a county under ORS 215.406.

(4) "Permit" means discretionary approval of a proposed development of land under ORS 215.010 to 215.090 and 215.402 to 215.422 or county legislation or regulation adopted pursuant thereto. [1973 c.552 §12; 1977 c.654 §1]

**215.406 Planning and zoning hearings officers; duties and powers; authority of governing body or planning commission to conduct hearings.** (1) A county governing body may authorize appointment of one or more planning and zoning hearings officers, to serve at the pleasure of the appointing authority. The hearings officer shall conduct hearings on applications for such classes of permits and contested cases as the county governing body designates.

(2) In the absence of a hearings officer a planning commission or the governing body may serve as hearings officer with all the powers and duties of a hearings officer. [1973 c.552 §13; 1977 c.766 §10]

215.410 [Repealed by 1971 c.13 §1]

**215.412 Adoption of hearing procedure.** The governing body of a county, by ordinance or order shall adopt one or more procedures for the conduct of hearings. [1973 c.552 §14; 1977 c.766 §11]

215.415 [1953 c.662 §5; repealed by 1971 c.13 §1]

**215.416 Application for permits; hearing requirements; criteria for granting permit; notice.** (1) When required or authorized by the ordinances, rules and regulations of a county, an owner of land may apply in writing to such persons as the governing body designates, for a permit, in the manner prescribed by the governing body.

(2) The hearings officer shall hold at least one public hearing on the application and within 90 days after receiving it deny or approve it. However, with the agreement of the county and the applicant, the proceeding on the application may be extended for a reasonable period of time, as determined by the



hearings officer, but not to exceed six months from the date of the first public hearing on the application.

(3) The application shall not be approved if the proposed use of land is found to be in conflict with the comprehensive plan of the county and other applicable ordinance provisions. The approval may include such conditions as are authorized by statute or county legislation.

(4) Hearings under this section shall be held only after notice to the applicant and also notice to other persons as otherwise provided by law.

(5) Approval or denial of a permit application shall be based on standards and criteria which shall be set forth in the zoning ordinance or other appropriate ordinance or regulation of the county and which shall relate approval or denial of a permit application to the zoning ordinance and comprehensive plan for the area in which the proposed use of land would occur and to the zoning ordinance and comprehensive plan for the county as a whole.

(6) Approval or denial of a permit shall be based upon and accompanied by a brief statement that explains the criteria and standards considered relevant to the decision, states the facts relied upon in rendering the decision and explains the justification for the decision based on the criteria, standards and facts set forth.

(7) Written notice of the approval or denial shall be given to all parties to the proceeding. [1973 c.552 §§15, 16; 1977 c.654 §2; 1977 c.766 §12; 1979 c.772 §10a]

215.420 [Amended by 1955 c.439 §10; repealed by 1971 c.13 §1]

**215.422 Review of action of a hearings officer.** (1) A party aggrieved by the action of a hearings officer may appeal the action to the planning commission or county governing body, or both, however the governing body prescribes. The appellate authority on its own motion may review the action. The procedure and type of hearing for such an appeal or review shall be prescribed by the governing body.

(2) A party aggrieved by the final determination may have the determination reviewed in the manner provided in sections 4 to 6, chapter 772, Oregon Laws 1979. [1973 c.522 §§17, 18; 1977 c.766 §13; 1979 c.772 §11]

Note: Section 29, chapter 772, Oregon Laws 1979, provides:

**Sec. 29.** The provisions of sections 1 to 8 and 11 and 12 of this Act first apply to petitions for review of land use decisions to be filed on or after November 1, 1979. Any petition before the Land Conservation and Development Commission or any circuit court still pending on November 1, 1979, shall be finally determined by the commission or the court in the manner provided in ORS 34.010 to 34.100, 197.300 to 197.315 before the effective date of this Act [November 1, 1979].

215.430 [1955 c.682 §2; repealed by 1971 c.13 §1]

215.440 [1955 c.682 §3; repealed by 1971 c.13 §1]

215.450 [1955 c.682 §4; repealed by 1971 c.13 §1]

215.460 [1963 c.619 §15; repealed by 1971 c.13 §1]

## NOTICE TO PROPERTY OWNERS

**215.503 Legislative act by ordinance; mailed notice to individual property owners required by county for land use actions.** (1) As used in this section, "owner" means the owner of the title to real property or the contract purchaser of real property, of record as shown on the last available complete tax assessment roll.

(2) Except as otherwise provided by county charter:

(a) All legislative acts relating to comprehensive plans, land use planning or zoning adopted by the governing body of a county shall be by ordinance.

(b) In addition to the notice required by ORS 215.060, at least 20 days but not more than 40 days before the date of the first hearing on an ordinance that proposes to amend an existing comprehensive plan or any element thereof or to adopt a new comprehensive plan, the governing body of a county shall cause a written individual notice of land use change to be mailed to each owner whose property would have to be rezoned in order to comply with the amended or new comprehensive plan if the ordinance becomes effective.

(c) In addition to the notice required by subsection (1) of ORS 215.223, at least 20 days but not more than 40 days before the date of the first hearing on an ordinance that proposes to rezone property, the governing body of a county shall cause a written individual notice of land use change to be mailed to the owner of each lot or parcel of property that the ordinance proposes to rezone.

(3) An additional individual notice of land use change required by paragraph (b) or (c) of subsection (2) of this section shall be approved by the governing body of the county and shall



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describe in detail how the proposed ordinance would affect the use of the property. The notice shall be mailed by first class mail to the affected owner at the address shown on the last available complete tax assessment roll.

[1977 c.664 §37]

215.505 [1969 c.324 §1; repealed by 1977 c.664 §42]

**215.508 Individual notice not required if funds not available.** Except as otherwise provided by county charter, if funds are not available from the Department of Land Conservation and Development to reimburse a county for expenses incurred in giving additional individual notices of land use change as provided in ORS 215.503, the governing body of the county is not required to give those additional notices. [1977 c.664 §38]

215.510 [1969 c.324 §2; 1973 c.80 §47; repealed by 1977 c.664 §42]

**215.513 Notice form; forwarding of notice to property purchaser.** (1) A mortgagee, lienholder, vendor or seller of real property who receives a mailed notice required by this chapter shall promptly forward the notice to the purchaser of the property. Each mailed notice required by this chapter shall contain the following statement: "NOTICE TO MORTGAGEE, LIENHOLDER, VENDOR OR SELLER: ORS CHAPTER 215 REQUIRES THAT IF YOU RECEIVE THIS NOTICE, IT MUST PROMPTLY BE FORWARDED TO THE PURCHASER."

(2) Mailed notices to owners of real property required by this chapter shall be deemed given to those owners named in an affidavit of mailing executed by the person designated by the governing body of a county to mail the notices. The failure of a person named in the affidavit to receive the notice shall not invalidate an ordinance. The failure of the governing body of a county to cause a notice to be mailed to an owner of a lot or parcel of property created or that has changed ownership since the last complete tax assessment roll was prepared shall not invalidate an ordinance. [1977 c.664 §39]

215.515 [1969 c.324 §3; 1973 c.80 §48; repealed by 1977 c.766 §16]

215.520 [1969 c.324 §4; repealed by 1977 c.664 §42]

215.525 [1969 c.324 §6; repealed by 1977 c.664 §42]

215.530 [1969 c.324 §7; repealed by 1977 c.664 §42]

215.535 [1969 c.324 §5; 1973 c.80 §49; repealed by 1977 c.664 §42]

## COUNTY HOUSING CODES

**215.605 Counties authorized to adopt housing codes.** For the protection of the public health, welfare and safety, the governing body of a county may adopt ordinances establishing housing codes for the county, or any portion thereof, except where housing code ordinances are in effect on August 22, 1969, or where such ordinances are enacted by an incorporated city subsequent to August 22, 1969. Such housing code ordinances may adopt by reference published codes, or any portion thereof, and a certified copy of such code or codes shall be filed with the county clerk of said county. [1969 c.418 §1]

**215.610 Procedure for adoption of housing ordinances; referral to voters.** (1) An ordinance authorized by ORS 215.605 may be adopted only after a hearing conducted by the board, and shall take effect 30 days after the date of enactment unless a later effective date is specified in the ordinance. Notice of such a hearing shall be published for two successive publication days, not less than 10 days before the hearing, in a newspaper considered by the board to be of general circulation within the county. The board may also cause the notice to be published by radio and television stations located within the county, or heard or viewed in the county.

(2) The board may refer an ordinance adopted under ORS 215.605 to the voters of the county for their approval or rejection. An ordinance adopted under ORS 215.605 is a local law within the meaning of, and subject to, ORS 250.155 to 250.235, relating to initiative and referendum. [1969 c.418 §2; 1979 c.190 §407]

**215.615 Application and contents of housing ordinances.** The provisions of housing code ordinances authorized by ORS 215.605 to 215.615 shall apply to all buildings or portions thereof used, or designed or intended to be used for human habitation, and shall include, but not be limited to:

(1) Standards for space, occupancy, light, ventilation, sanitation, heating, exits and fire protection.

(2) Inspection of such buildings.

(3) Procedures whereby buildings or portions thereof which are determined to be substandard are declared to be public nuisances and are required to be abated by repair, rehabilitation, demolition or removal.

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215.615

(4) An advisory and appeals board. [1969  
c.418 §3]

215.990 [Subsections (1) and (2) enacted as 1955  
c.439 §11; subsection (5) enacted as 1969 c.324 §8; 1971  
c.13 §4; repealed by 1977 c.766 §16]

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Thomas G. Clifford, Legislative Counsel, do hereby certify that I have compared each section printed in this chapter with the original section in the enrolled bill, and that the sections in this chapter are correct copies of the enrolled sections, with the exception of the changes in form permitted by ORS 173.160 and other changes specifically authorized by law.

Done at Salem, Oregon,  
October 1, 1979.

Thomas G. Clifford  
Legislative Counsel

CHAPTERS 216 TO 220  
[Reserved for expansion]



## Chapter 227

### 1979 REPLACEMENT PART

### City Planning and Zoning

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227.010	Definitions for ORS 227.030 to 227.300	227.170	Hearing procedure
227.020	Authority to create planning commission	227.173	Basis for decision on permit application; statement of reason for grant or denial
227.030	Membership	227.175	Application for permits; hearing requirements; criteria for approving permits
227.035	Planning commission member conflict of interest activities	227.180	Review of action on permit application
227.090	Powers and duties of commission	<b>DEVELOPMENT ORDINANCES</b>	
227.095	Definitions for ORS 227.100 and 227.110	227.215	"Development" defined; regulation of development
227.100	Submission of plats for subdivisions and plans for street alterations and public buildings to commission; report	227.280	Enforcement of development legislation
227.110	City approval required prior to recording of subdivision plats and plats or deeds dedicating land to public use within six miles of city	227.286	City ordinances applicable to public property
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227.160	Definitions for ORS 227.160 to 227.180		

### CROSS REFERENCES

Advertising signs, regulation, Ch. 377  
 Airport zoning, Ch. 492  
 Airport Zoning Act, 492.510 to 492.710  
 Assessment of open space lands for ad valorem taxation, 308.740  
 Columbia River Gorge Commission, land use advisory body, 390.430  
 Compensation for reduced value because of restriction of street use, 105.855  
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 Land Conservation and Development Commission, compliance acknowledgment for county comprehensive plan and zoning, effect, 197.251, 197.273  
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City planning for housing projects, 456.125, 456.315  
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#### 227.110

Jurisdiction of city to approve plats outside city limits, 215.170

#### 227.120

Authority to rename streets and approve plats in adjacent territory, 215.170

### CITY PLANNING COMMISSION

**227.010 Definitions for ORS 227.030 to 227.300.** As used in ORS 227.030 to 227.300, "council" means a representative legislative body. [Amended by 1975 c.767 §1]

**227.020 Authority to create planning commission.** (1) A city may create a planning commission for the city and provide for its organization and operations.

(2) This section shall be liberally construed and shall include the authority to create a joint planning commission and to utilize an intergovernmental agency for planning as authorized by ORS 190.003 to 190.110.

[Amended by 1973 c.739 §1; 1975 c.767 §2]

**227.030 Membership.** (1) Not more than two members of a city planning commission may be city officers, who shall serve as ex officio nonvoting members.

(2) A member of such a commission may be removed by the appointing authority, after hearing, for misconduct or nonperformance of duty.

(3) Any vacancy in such a commission shall be filled by the appointing authority for the unexpired term of the predecessor in the office.

(4) No more than two voting members of the commission may engage principally in the buying, selling or developing of real estate for profit as individuals, or be members of any partnership, or officers or employees of any corporation, that engages principally in the buying, selling or developing of real estate for profit. No more than two members shall be engaged in the same kind of occupation, business, trade or profession. [Amended by 1969 c.430 §1; 1973 c.739 §2; 1975 c.767 §3]

**227.035 Planning commission member conflict of interest activities.** A member of a planning commission shall not participate in any commission proceeding or action in which any of the following has a direct or substantial financial interest: The member or his spouse, brother, sister, child, parent, father-in-law, mother-in-law, any business in which he is then serving or has served within the previous two years, or any business with which he is negotiating for or has an arrangement or understanding concerning prospective partnership or employment. Any actual or potential interest shall be disclosed at the meeting of the commission where the action is being taken. [1973 c.739 §5]

**227.040** [Repealed by 1973 c.739 §13]

**227.050** [Amended by 1969 c.430 §2; repealed by 1975 c.767 §16]

**227.060** [Repealed by 1975 c.767 §16]

**227.070** [Amended by 1969 c.430 §3; 1973 c.739 §3; repealed by 1975 c.767 §16]

**227.080** [Repealed by 1973 c.739 §13]

**227.090 Powers and duties of commission.** (1) Except as otherwise provided by the city council, a city planning commission may:

(a) Recommend and make suggestions to the council and to other public authorities concerning:

(A) The laying out, widening, extending and locating of public thoroughfares, parking of vehicles, relief of traffic congestion;

(B) Betterment of housing and sanitation conditions;

(C) Establishment of districts for limiting the use, height, area, bulk and other characteristics of buildings and structures related to land development; and

(D) Protection and assurance of access to incident solar radiation.

(b) Recommend to the council and other public authorities plans for regulating the future growth, development and beautification of the city in respect to its public and private buildings and works, streets, parks, grounds and vacant lots, and plans consistent with future growth and development of the city in order to secure to the city and its inhabitants sanitation, proper service of public utilities, including appropriate public incentives for overall energy conservation and harbor, shipping and transportation facilities.

(c) Recommend to the council and other public authorities plans for promotion, development and regulation of industrial and economic needs of the community in respect to industrial pursuits.

(d) Advertise the industrial advantages and opportunities of the city and availability of real estate within the city for industrial settlement.

(e) Encourage industrial settlement within the city.

(f) Make economic surveys of present and potential industrial needs of the city.

(g) Study needs of local industries with a view to strengthening and developing them and stabilizing employment conditions.



## 227.095

## CITIES

(h) Do and perform all other acts and things necessary or proper to carry out the provisions of ORS 227.010 to 227.170, 227.175 and 227.180.

(i) Study and propose such measures as are advisable for promotion of the public interest, health, morals, safety, comfort, convenience and welfare of the city and of the area within six miles thereof.

(2) For the purposes of this section, "incident solar radiation" means solar energy falling upon a given surface area. [Amended by 1975 c.153 §3; 1975 c.767 §4; 1979 c.671 §3]

**227.095 Definitions for ORS 227.100 and 227.110.** As used in ORS 227.100 and 227.110, "subdivision" and "plat" have the meanings given those terms in ORS 92.010. [1955 c.756 §28]

**227.100 Submission of plats for subdivisions and plans for street alterations and public buildings to commission; report.** All subdivision plats located within the city limits, and all plans or plats for vacating or laying out, widening, extending, parking and locating streets or plans for public buildings shall first be submitted to the commission by the city engineer or other proper municipal officer, and a report thereon from the commission secured in writing before approval is given by the proper municipal official. [Amended by 1955 c.756 §26]

**227.110 City approval required prior to recording of subdivision plats and plats or deeds dedicating land to public use within six miles of city.** (1) All subdivision plats and all plats or deeds dedicating land to public use in that portion of a county within six miles outside the limits of any city shall first be submitted to the city planning commission or, if no such commission exists, to the city engineer of the city and approved by the commission or engineer before they shall be recorded.

(2) It shall be unlawful to receive or record such plan, plat or replat or deed in any public office unless the same bears thereon the approval, by indorsement, of such commission or city engineer. However, the indorsement of the commission or city engineer of the city with boundaries nearest the land such document affects shall satisfy the requirements of this section in case the boundaries of more than one city are within six miles of the property so mapped or described. If the governing bodies of such cities mutually agree upon a boundary line establishing the limits of the

jurisdiction of the cities other than the line equidistant between the cities and file the agreement with the recording officer of the county containing such boundary line, the boundary line mutually agreed upon shall become the limit of the jurisdiction of each city until superseded by a new agreement between the cities or until one of the cities files with such recording officer a written notification stating that the agreement shall no longer apply. [Amended by 1955 c.756 §27]

**227.120 Procedure and approval for renaming streets.** Within six miles of the limits of any city, the commission, if there is one, or if no such commission legally exists, then the city engineer, shall recommend to the city council the renaming of any existing street, highway or road, other than a county road or state highway, if in the judgment of the commission, or if no such commission legally exists, then in the judgment of the city engineer, such renaming is in the best interest of the city and the six mile area. Upon receiving such recommendation the council shall afford persons particularly interested, and the general public, an opportunity to be heard, at a time and place to be specified in a notice of hearing published in a newspaper of general circulation within the municipality and the six mile area not less than once within the week prior to the week within which the hearing is to be held. After such opportunity for hearing has been afforded, the city council by ordinance shall rename the street or highway in accordance with the recommendation or by resolution shall reject the recommendation. A certified copy of each such ordinance shall be filed for record with the county clerk or recorder, and a like copy shall be filed with the county assessor and county surveyor. The county surveyor shall enter the new names of such streets and roads in red ink on any filed plat and tracing thereof which may be affected, together with appropriate notations concerning the same.

**227.130** [Repealed by 1975 c.767 §16]

**227.140** [Repealed by 1975 c.767 §16]

**227.150** [Repealed by 1975 c.767 §16]

## PLANNING AND ZONING HEARINGS AND REVIEW

**227.160 Definitions for ORS 227.160 to 227.180.** As used in ORS 227.160 to 227.180:

(1) "Hearings officer" means a planning and zoning hearings officer appointed or des-



ignated by a city council under ORS 227.165.

(2) "Permit" means discretionary approval of a proposed development of land, under ORS 227.215 or city legislation or regulation. [1973 c.739 §6; 1975 c.767 §5]

**227.165 Planning and zoning hearings officers; duties and powers.** A city may appoint one or more planning and zoning hearings officers, to serve at the pleasure of the appointing authority. Such an officer shall conduct hearings on applications for such classes of permits and zone changes as the council designates. [1973 c.739 §7; 1975 c.767 §6]

**227.170 Hearing procedure.** The city council shall prescribe one or more procedures for the conduct of hearings on permits and zone changes. [1973 c.739 §8; 1975 c.767 §7]

**227.173 Basis for decision on permit application; statement of reasons for grant or denial.** (1) Approval or denial of a discretionary permit application shall be based on standards and criteria, which shall be set forth in the development ordinance and which shall relate approval or denial of a discretionary permit application to the development ordinance and to the comprehensive plan for the area in which the development would occur and to the development ordinance and comprehensive plan for the city as a whole.

(2) Approval or denial of a permit application shall be based upon and accompanied by a brief statement that explains the criteria and standards considered relevant to the decision, states the facts relied upon in rendering the decision and explains the justification for the decision based on the criteria, standards and facts set forth.

(3) Written notice of the approval or denial shall be given to all parties to the proceeding. [1977 c.654 §5; 1979 c.772 §10b]

**227.175 Application for permits; hearing requirements; criteria for approving permits.** (1) When required or authorized by a city, an owner of land may apply in writing to the hearings officer, or such other person as the city council designates, for a permit or zone change, upon such forms and in such a manner as the city council prescribes.

(2) The hearings officer shall hold at least one public hearing on the application and within 60 days after receiving it deny or approve it. However, at the option of either the city or the applicant, the proceeding on the application may be extended for a reasonable

period of time, as determined by the hearings officer.

(3) The application shall not be approved unless the proposed development of land would be in compliance with the comprehensive plan for the city. The approval may include such conditions as are authorized by ORS 227.215 or any city legislation.

(4) Hearings under this section may be held only after notice to the applicant and other interested persons. [1973 c.739 §§9,10; 1975 c.767 §8]

**227.180 Review of action on permit application.** (1) A party aggrieved by the action of a hearings officer may appeal the action to the planning commission or council of the city, or both, however the council prescribes. The appellate authority on its own motion may review the action. The procedure for such an appeal or review shall be prescribed by the council, but shall include a hearing at least for argument. Upon appeal or review the appellate authority shall consider the record of the hearings officer's action. That record need not set forth evidence verbatim.

(2) A party aggrieved by the final determination in a proceeding for a discretionary permit or zone change may have the determination reviewed under sections 4 to 6, chapter 772, Oregon Laws 1979. [1973 c.739 §§11,12; 1975 c.767 §9; 1979 c.772 §12]

**Note:** Section 29, chapter 772, Oregon Laws 1979, provides:

**Sec. 29.** The provisions of sections 1 to 8 and 11 and 12 of this Act first apply to petitions for review of land use decisions to be filed on or after November 1, 1979. Any petition before the Land Conservation and Development Commission or any circuit court still pending on November 1, 1979, shall be finally determined by the commission or the court in the manner provided in ORS 34.010 to 34.100, 197.300 to 197.315 before the effective date of this Act [November 1, 1979].

## DEVELOPMENT ORDINANCES

**227.210** [Repealed by 1975 c.767 §16]

**227.215 "Development" defined; regulation of development.** (1) As used in this section, "development" means a building or mining operation, making a material change in the use or appearance of a structure or land, dividing land into two or more parcels, including partitions and subdivisions as provided in ORS 92.010 to 92.285, and creating or terminating a right of access.



(2) A city may plan and otherwise encourage and regulate the development of land. A city may adopt an ordinance requiring that whatever land development is undertaken in the city comply with the requirements of the ordinance and be undertaken only in compliance with the terms of a development permit.

(3) A development ordinance may provide for:

(a) Development for which a permit is granted as of right on compliance with the terms of the ordinance;

(b) Development for which a permit is granted discretionarily in accordance and consistent with the requirements of ORS 227.173;

(c) Development which need not be under a development permit but shall comply with the ordinance; and

(d) Development which is exempt from the ordinance.

(4) The ordinance may divide the city into districts and apply to all or part of the city.

[1975 c.767 §11 (enacted in lieu of 227.220 to 227.270); 1977 c.654 §3]

**227.220** [Repealed by 1975 c.767 §10 (227.215 enacted in lieu of 227.220)]

**227.230** [Amended by 1971 c.739 §2; 1975 c.153 §4; repealed by 1975 c.767 §10 (227.215 enacted in lieu of 227.230)]

**227.240** [Repealed by 1975 c.767 §10 (227.215 enacted in lieu of 227.240)]

**227.250** [Repealed by 1975 c.767 §10 (227.215 enacted in lieu of 227.250)]

**227.260** [Repealed by 1975 c.767 §10 (227.215 enacted in lieu of 227.260)]

**227.270** [Repealed by 1975 c.767 §10 (227.215 enacted in lieu of 227.270)]

**227.280 Enforcement of development legislation.** The council may provide for enforcement of any legislation established under ORS 227.215. [Amended by 1975 c.767 §14]

**227.285** [1959 c.601 §1; repealed by 1969 c.460 §2 (227.286 enacted in lieu of 227.285)]

**227.286 City ordinances applicable to public property.** City ordinances regulating the location, construction, maintenance, repair, alteration, use and occupancy of land and buildings and other structures shall apply to publicly owned property, except as the ordinances prescribe to the contrary. [1969 c.460 §3 (enacted in lieu of 227.285); 1975 c.767 §12]

**227.290 Building setback lines established by city council; criteria.** (1) The council or other governing body of any incorporated city, under an exercise of its police powers, may establish or alter building setback lines on private property adjacent to any alley, street, avenue, boulevard, highway or other public way in such city. It may make it unlawful and provide a penalty for erecting after said establishment any building or structure closer to the street line than such setback line, except as may be expressly provided by ordinance. The council or body shall pass and put into effect such ordinances as may be needed for the purpose of providing for a notice to and hearing of persons owning property affected before establishing any such setback line. Such setback lines may be established without requiring a cutting off or removal of buildings existing at the time.

(2) The council may consider, in enacting ordinances governing building setback lines, the site slope and tree cover of the land with regard to solar exposure. The council shall not restrict construction where site slope and tree cover make incident solar energy collection unfeasible, except an existing solar structure's sun plane shall not be substantially impaired.

(3) The powers given in this section shall be so exercised as to preserve constitutional rights. [Amended by 1979 c.671 §4]

**227.300 Use of eminent domain power to establish setback lines.** The council or other governing body of any incorporated city, under an exercise of the power of eminent domain, may establish or alter building setback lines on private property adjacent to any alley, street, avenue, boulevard, highway, or other public way in such city in cases where the establishment of such setback lines is for street widening purposes, and in cases where the establishment of such setback lines affects buildings or structures existing at the time. The council or other governing body of the city shall pass and put into effect such ordinances as may be needed for the purpose of providing for a notice to and hearing of persons whose property is affected by such establishment. In case of the exercise of the power of eminent domain, provision shall be made for ascertaining and paying just compensation for any damages caused as the result of establishing such setback lines.

**227.310** [1957 c.67 §1; 1975 c.767 §13; repealed by 1977 c.766 §16]

**CITY PLANNING AND ZONING**

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**CERTIFICATE OF LEGISLATIVE COUNSEL**

Pursuant to ORS 173.170, I, Thomas G. Clifford, Legislative Counsel, do hereby certify that I have compared each section printed in this chapter with the original section in the enrolled bill, and that the sections in this chapter are correct copies of the enrolled sections, with the exception of the changes in form permitted by ORS 173.160 and other changes specifically authorized by law.

Done at Salem, Oregon,  
October 1, 1979.

Thomas G. Clifford

Legislative Counsel

**CHAPTERS 228 TO 235**  
**[Reserved for expansion]**



## WISCONSIN FARMLAND PROTECTION PROGRAM

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WISCONSIN FARMLAND PROTECTION PROGRAM

by

William Toner

I. INTRODUCTION

Wisconsin has a well deserved reputation as America's dairyland, ranking first among all states in milk and butter production as well as cheese.<sup>1</sup> The State produces nearly 18% of all the nation's milk, 26 percent of butter and close to 38 percent of cheese.<sup>2</sup>

As one would expect, the State also ranks first in the production of milk cows and heifers that have calved, generating 16.8 percent of the Nation's total.<sup>3</sup> The state ranks second in corn for silage (9.5% of the total) and seventh (4.0%) in corn for grain; fourth in oats (10.5% of the total); and, first in hay (8.6% of the total).<sup>4</sup> Wisconsin is also a major producer of cranberries, second amongst all states, with 36.4% of total U.S. production, and is also the leading producer of sweet corn for processing, green peas for processing, and beets for canning.<sup>5</sup>

There are 34,858,880 acres in the State of which 30.98 percent or 10,800,620 acres are prime.<sup>6</sup> Fully 52 percent of the total acres are in farms, and harvested cropland covers 9,972,263 acres.<sup>7</sup> In 1978, estimated farm income stood at \$1.3 billion.<sup>8</sup> Gross farm income was \$3.7 billion.<sup>9</sup> The average size farm in 1979 was 196.8 acres, down from 184.3 acres in 1971.<sup>10</sup> The numbers of farms decreased from 108,000 in 1971 to 95,000 in 1979.<sup>11</sup> In 1978, estimated farm employment was 151,609, representing .07 percent of total employment in the State.<sup>12</sup>

Estimated 1978 population of Wisconsin was 4.6 million, up from 4.4 million in 1970 and 3.9 million in 1960.<sup>13</sup> The State's population is concentrated in the southeastern quadrant of the state along Lake Michigan. Milwaukee is the largest city, followed by Madison (the Capitol), and Green Bay. There are seventy-one counties in the State.

The origin of the Farmland Preservation Act, signed into law on July 29, 1977, can be traced back to 1960.<sup>14</sup> At that time the Farm Bureau and other farm interests began lobbying for the use value assessment of agricultural land. However, the State Constitution required uniform assessment of all land and, thus, agricultural land would be assessed at its market value.

In response to the constitutional prohibition, farm interests began work on a proposed constitutional amendment. This too required legislative approval, and by February 1974, the legislature endorsed a popular referendum on the matter. Two months later the constitutional amendment was approved by voters. The amendment passed narrowly -- the yes vote was 50.9%.



Analysis of the voting patterns showed that the amendment received its strongest support from collar counties -- rural counties surrounding metropolitan ones. But support was also seen in urban counties such as Dane (Madison) with 54.3% voting yes, and Brown County (Green Bay) with 52.8% voting yes. In the key urban county of Milwaukee, the amendment received the endorsement of 46.7% of the voters. While support from rural counties could be expected because of the property tax relief offered to farmland owners, the support from urban counties was more difficult to understand. Analysts later traced much of the urban support to the work of various environmental groups that supported the amendment because of its open space and environmental benefits.

The amendment, however, did not specify how the State would go about granting property tax relief to farmland owners. This was left up to the legislature and, initially, to a special Legislative Council Study Committee composed of members of the public, state senators, and representatives. The Legislative Council did reach agreement of key features of a program including property tax relief coupled with land use controls. The Council approved the package by a vote of 17-2.

When the proposal reached the legislature it was attacked by both urban and rural legislators. Urban legislators were disturbed by the property tax relief granted to farmers at the expense of their urban constituents, while rural legislators fought against property tax relief that was tied to land use controls. As a result of the combined opposition, the proposal was not passed.

In the 1977 legislative session the Farmland Preservation Act became law. While urban legislators still opposed property tax relief and rural legislators still opposed land use controls, other, more pressing, matters were coming before the legislature. One of these was the State budget. The budget was of keen interest to both rural and urban legislators. Rural legislators, who by now were adamant for property tax relief, tied their support for the budget to the passage of property tax relief for farmers. Urban legislators, needing rural support to get the budget passed, acquiesced to the property tax relief so long as it was tied to land use controls. Rural legislators compromised, accepting the land use controls, and the Act was passed.

The unique feature of the Farmland Preservation Act is that income tax credits to farmers are predicated upon local planning and zoning aimed at the preservation of agricultural land.<sup>15</sup> The credits available to farmers increase (up to \$4,200.00) as farm income decreases and property tax increases. Thus, a farmer with a low family income and high property taxes would be eligible for the maximum amount of credit. Conversely, farmers with higher incomes or lower property taxes would not be eligible for the maximum income tax credit.

But in order to sustain eligibility, local governments must by 1982 take action to protect prime agricultural land. If this action is not taken,

farmers cannot receive income tax credits. So local governments have considerable incentive to prepare and adopt the appropriate zoning and planning devices.

## II. PROGRAM DESCRIPTION

There are three major actors involved in the program. The first is the Agricultural Lands Preservation Board, the principal state authority responsible for implementing the program. The second are county governments which, after October 1, 1972, must take planning or zoning action to enable farmland owners to receive tax credits. The third are the farmland owners who may participate in the program by entering into contracts with the state to keep their lands in agricultural use in return for the tax credits.

The program is structured in two phases. In the initial phase, lasting until October 1982, farmland owners receive tax credits by entering into contracts with the state. In this period, county and township governments are not required to take action. In the permanent phase, however, county governments must take action if landowners are to remain eligible for the tax credits. The action required depends upon whether the county involved is designated a rural county or an urban county. Basically, urban counties must adopt more restrictive planning and zoning requirements than rural counties to protect agricultural lands in order for resident landowners to remain eligible for the tax credits. Even in the permanent phase, however, there remains a role, in rural counties only, for contracts.

### Agricultural Lands Preservation Board

Under the Act, the principal State Authority is the Agricultural Lands Preservation Board (ALPB).<sup>16</sup> The five members of this Board serve four year terms. Three of the members, by statute, are the Secretaries of the State Departments of Administration; Local Affairs and Development; and, Agriculture, Trade, and Consumer Protection. The remaining two members are appointed from the citizenry by the Governor -- currently both are farmers. The Secretary of Agriculture, Trade, and Consumer Protection serves as the chair.

The ALPB has five main responsibilities. First, the Board approves or rejects farmland preservation agreements contracts with landowners. Second, the Board sets the key planning and regulatory standards for participating local units of government. Third, the Board approves or rejects farmland preservation plans prepared by local government. Fourth, the Board approves or rejects exclusive agricultural preservation ordinances prepared by local government. Fifth, the Board serves as the administrative appeal body on all matters pertaining to the program.

Contracts: Initial Phase

In the initial phase -- through September 1982 -- a landowner may contract directly with the State to receive the property tax credits. In return for the tax credits, the landowner agrees to retain the farmland in agricultural use.

A landowner may enter into an initial farmland preservation contract if the subject land meets all of the following:<sup>17</sup>

1. The land includes at least one parcel of 35 acres or more contiguous acres;
2. The land produced a value of farm products (gross revenues from agricultural use) of \$6,000.00 or more in the previous three years;
3. The land was in agricultural use for at least 12 consecutive months during the preceding 36 months;
4. The land was used for one or more of the following agricultural uses: beekeeping; livestock raising; orchards, plant greenhouses; poultry raising; raising of grain, grass, mint and seed crops; raising of fruits, nuts and berries; sod farming; vegetable raising; commercial feedlots; dairying; egg production; floriculture; fish or fur farming; forest and game management; grazing;
5. The land is owned by a resident of Wisconsin;
6. The land has a Soil and Water Conservation District Conservation Plan under development or in effect.

The owner fills out the application and forwards it to the County Clerk. The Clerk notifies relevant state and local agencies and forwards the application to the County Board. The County Board must approve or reject the application within 120 days, and this approval or rejection must be based upon the following:<sup>18</sup>

- (1) Whether the farmland is designated an agricultural preservation area in a certified agricultural preservation plan or is an area zoned for exclusive agricultural use and similarly certified (applies only in the permanent program);
- (2) The productivity and viability of the land for agricultural use;
- (3) The predominance of agricultural use on the land;



- (4) The inclusion of all contiguous lands in single ownership;
- (5) Consistency with the county agricultural preservation plan; and,
- (6) Other criteria established by the local governing body consistent with the agricultural preservation purposes of the Act.

If approved, the contract is forwarded to the Department of Agriculture, Trade, and Consumer Protection (DATCP). DATCP may reject the contract only if the land is not eligible farmland.

If the application is rejected by either the local government or DATCP, the application is returned to the applicant with a written statement of the reasons for rejection. Within 30 days of receiving the statement, the applicant may appeal the rejection to the Board. Within 60 days of the appeal, the Board must review the application in terms of the six criteria listed above. Based upon the criteria, the Board may approve or reject the application.

Once approved by the Board, a contract is sent to the applicant. The contract acts like a restrictive covenant and runs with the land.<sup>19</sup> It establishes the State's obligation to pay permissible tax credits, provides that the State will not require the owner to permit public access onto the land, and exempts the landowner from special assessments for sanitary sewers, water, street lighting, or non-farm drainage. In return, the applicant agrees to keep the land in agricultural use.

#### Contracts: Permanent Program

Although all initial contracts terminate on October 1, 1982, landowners in rural counties -- counties with a population density of less than 100 persons per square mile -- may still enter into long term contracts with the state.<sup>20</sup> These contracts, which follow the same procedures and criteria of initial contracts, may run for 10, 15, 20, or 25 years, but there is no incentive provided for those landowners entering into the 25 year contract that is not available to those entering into shorter contracts (except holding the state to tax credits in the event of program repeal).

In the permanent program, landowners in rural counties may only enter into a long term contract if the county has adopted a farmland preservation plan that has been certified by the state. With the contract and the county farmland preservation plan, the landowner is eligible for 70% of the maximum tax credit. The incentive for landowners to contract lands rests with the contract guarantee to exempt them from non-farm related special assessments; to guarantee them that the state will not require the landowner to grant public access onto the land; and that, in the event of program cancellation, landowners will continue to get tax credits for the contract term.

In return for these guarantees, the landowner agrees to the following:<sup>21</sup>

- (1) No structure may be built on the land except for those consistent with agricultural use or with the approval of the local governing body and the Board;
- (2) Land improvements shall not be made except for those consistent with agricultural use or with approval of the local governing body and the Board; and,
- (3) Farm operations shall be conducted in accordance with an approved soil and water conservation plan.

The act provides that structures or improvements made incident to scenic, access, or utility easements are consistent with agricultural use.

On October 1, 1982, all initial contracts in urban counties -- those with a population density of 100 people per square mile or greater -- will expire. In the permanent program, there is no role for long term contracts in urban counties. Landowners in urban counties may only participate through local zoning.

The tax credits available to owners are based upon a circuit breaker concept that provides a credit (or refund) against state income tax for property taxes deemed excessive in relation to the owners income. Under the formula, as income falls, tax credits increase; and as the property taxes rise, credits also rise. As property taxes increase to higher and higher levels (versus income), the tax credit acts as a circuit breaker by relieving the property tax load.

MAXIMUM TAX CREDIT SCHEDULE*						
House- hold	Property Taxes:					
Income:	\$1,000	\$2,000	\$3,000	\$4,000	\$5,000	\$6,000 or more
0	900	1,800	2,500	3,200	3,700	4,200
5,000	900	1,800	2,500	3,200	3,700	4,200
10,000	675	1,575	2,325	3,025	3,575	4,075
15,000	360	1,260	2,080	2,780	3,400	3,900
20,000	0	855	1,755	2,465	3,165	3,675
25,000	0	180	1,080	1,940	2,640	3,300
30,000	0	0	0	855	1,755	2,465
35,000	0	0	0	0	180	1,080
40,000	0	0	0	0	0	0
*Actual credit received by farmers: Initial contract = 50% of these amounts; exclusive agricultural zoning = 70% of these amounts; zoning plus an agricultural preservation plan = 100% of these amounts.						

Once signed, the contract may be relinquished in two ways.<sup>22</sup> First, by expiration of the 10 or 25 year term; and, second, by mutual agreement of the owner, the County Board, and the State Board. The County Board may only approve early cancellation if:

- (1) The contract imposes continuing economic hardship by preventing necessary improvements to the land -- the farm unit is operated at a loss because of restrictions in the contract;
- (2) Significant natural physical changes in the land which are irreversible and permanent; or,
- (3) Surrounding conditions prohibit agricultural use.

The act specifically provides that the existence of uses of land which would provide higher economic returns is not an economic hardship. Natural physical changes in the land may arise as a result of flood, subsidence, severe erosion of topsoil or the like, and surrounding conditions refers to cases where a farm under contract is subjected to adjacent land uses which are wholly incompatible with continued farm operations.

If approved for cancellation by the County, the application is sent to the State Board for concurrence or rejection. The State Board must use the same criteria in examining the application. If approved, the contract may be terminated. If rejected by the County, the Act provides for an appeal to the State Board which must use the same criteria.

When a contract is terminated before the specified expiration date, rollback tax penalties are applied. The owner must pay back all tax credits received in the last 10 years plus 6% compound interest from the date of the first credit until the lien is paid in full. The penalty is not due the state until some part of the land is sold or when the land is converted to a nonagricultural use.

If a landowner changes land use without following the proper procedures, the State or Local Government may enjoin the landowner.<sup>23</sup> The landowner is then subject to a civil penalty for actual damages which may not exceed double the value of the land as set at the time the agreement was made.

#### Planning and Zoning: Permanent Phase

The initial phase of the preservation program -- the period in which owners contract with the state -- terminates October 1, 1982. In order for owners to maintain the tax credits, local governments must take action to preserve agricultural land. This action is in the form of exclusive agricultural zoning or agricultural preservation plans or both. Owners receive the highest tax credits allowed when County government adopts both exclusive agricultural zoning and an agricultural preservation plan.



The planning requirements vary depending upon whether the county is urban or rural.<sup>24</sup> Urban Counties are defined as those having a population density of 100 or more persons per square mile. Rural counties are those with a population density of less than 100 person per square mile. The estimates of population are taken from the most recent Census of Population.

Under the permanent program, urban counties must adopt an exclusive agricultural zoning ordinance if landowners are to remain eligible for 70 percent of the permissible credit. If the urban county adopts both the preservation plan and zoning ordinance, the landowner is eligible for 100 percent of the permitted credit. If the urban county adopts only the preservation plan, landowners are not eligible for tax credits.

Townships in an urban county may reject the county-wide zoning ordinance if a majority of them disapprove it. Unless this action is taken, the ordinance becomes effective in all townships six months after adoption by the County Board. If the urban county is merely amending their existing ordinance to include an exclusive agricultural zone (as opposed to adopting a new ordinance), the amended ordinance goes into effect in all townships which do not file a certified copy of a resolution disapproving the amendment. In effect, an ordinance amendment gives townships a veto over it in any township taking the veto action. However, the amended ordinance would go into effect in all other Townships which did not file the disapproval resolution.

In rural counties landowners with long term contracts are eligible for 70 percent of the permitted credit if the County has an adopted and certified Agricultural Preservation Plan. This may increase to 100 percent if the County adopts a new zoning ordinance, to implement the plan. But such ordinances, in rural counties, must be approved by each Township in the County before the ordinance becomes effective in that Township. As with urban counties, if the rural county is merely amending their ordinance to include exclusive agricultural zoning, the ordinance becomes effective in the Township unless the Township specifically rejects it.<sup>25</sup>

Under the permanent program, contract terminations are subject to penalties.<sup>26</sup> If a contract is cancelled before the termination date, a lien is recorded against the property for all tax credits received during the previous 20 years. There is also a 6% compound interest penalty from the time that the contract was first signed.

If the owner fails to renew a contract, after the existing contract has expired, a lien is recorded against the property for all tax credits received during the last ten years. There is also a 6% compound interest that begins when the contract expires. This penalty is due to the state when all or part of the land is sold or when it is converted to non-farm use.

### Planning Standards and Guidelines

The Act sets basic content requirements for the Agricultural Preservation Plan. The requirements fall into four main areas.<sup>27</sup> First, the Statute requires that the plan include policy statements on:

- a. preservation of agricultural land;
- b. urban growth;
- c. provision of public facilities; and,
- d. preservation of significant natural resources, open spaces, and scenic, historic or architectural areas.

Second, the plan must also include map(s) showing:

- a. agricultural lands to be preserved;
- b. areas of special environmental, natural resource or open space significance; and,
- c. transition areas for future development.

Third, the plan must deal with related plans and interests of nearby governments by:

- a. showing the relationship between the Plan and regional plans and explaining differences, if any;
- b. including preservation plans adopted by county municipalities so long as the municipal plans comply with statutory requirements; and,
- c. having the Plan reviewed by all county municipalities as well as adjoining counties and by the relevant regional planning agency or commission.

Finally, the plan must include discussion of an implementation program. Such programs will include:

- a. land use controls to implement policies in the Plan;
- b. the character, timing, location, use, capacity and financing for existing and proposed public facilities;
- c. procedures and standards for governing the installation and maintenance of private waste control systems including designation of areas not suited to such systems; and,
- d. a program for protection of special environmental, natural resource and open space areas.

Based upon the standards contained in the Act, the ALPB adopted, in June 1978, a more definitive set of guidelines that counties should follow in preparing their Agricultural Preservation Plans.<sup>28</sup> The plan guidelines are divided into five major sections: (1) General Standards; (2) Policy Statements; (3) Maps; (4) Implementation Programs; and, (5) ALPB Review and Certification.

### (1) General Standards

There are four general standards. The first general standard specifies the elements to be included in the planning process: (a) Goal Formulation; (b) Inventory and Data Collection; (c) Data Analysis; (d) Plan selection and adoption; and, (e) Implementation.

The second General Standard requires evidence that a citizen participation process was used in goal formulation, plan selection and adoption, and implementation.

The third General Standard sets forth inventory requirements. The inventory process includes data collection on: (a) Land use; (b) Agricultural use and productivity; (c) Natural resources and open space; (d) Population and population density; (e) Housing; (f) Public facilities; and, (g) Urban growth.

The fourth General Standard requires that the plan show how and where anticipated urban growth can be accommodated.

### (2) Policy Statements

The second major section sets forth planning guidelines for policy statements. This section specifies the type of policy required as well as requirements for treatment of the policies in the plan. Policies are required for: (a) preservation of agricultural lands; (b) urban growth; (c) provision of public facilities; and, (d) protection of significant natural resource, open space, scenic, historic or architectural areas. The Board requires that the policies be set forth in one section of the plan, that supporting policies be referenced, that inconsistencies be resolved or explained, that the source of all policies be documented, and that the plan should document how the policies are to be used.

### (3) Mapping

The third section of planning guidelines deals with the types and scales of maps to be prepared for the preservation plan. The Act requires maps "identifying agricultural areas to be preserved, areas of special environmental, natural resource or open space significance, and, transition areas, if any. Transition areas are areas in predominantly agricultural use which the plan identifies for future development."<sup>29</sup> Any agricultural preservation areas mapped must be a minimum of 100 acres. Any transition areas mapped must be a minimum of 35 acres.



The ALPB, in December 1977, and later in June 1978, expanded upon the requirements for farmland mapping.<sup>30</sup> First, the County Board is charged to appoint a technical advisory group to assist with the mapping program. If possible, the group should include the county extension agent, U.S. Soil Conservation Service representative, the zoning administrator, county planner, staff member of the Soil and Water Conservation district, and a staff member of a regional planning commission.

Second, the Counties are also required to provide for public participation in the mapping program. This includes a specification of the process and the timing for public involvement.

Third, the base maps must be at a minimum scale of 1/24,000 and be consistent with the County definition of productive agricultural land and the general purpose of the county farmland preservation program.

Fourth, the county or agency preparing the map must adopt a definition of agricultural lands in the county to be considered for preservation. The definition is to be based on:

- a. Soil type (based upon U.S. Soil Conservation Service capability classes)
- b. Physical and economic productivity of land currently in agricultural use;
- c. Potential productivity of land given improved management practices such as irrigation or drainage.

Fifth, the county or agency preparing the map must also adopt criteria for excluding agricultural lands identified above from the preservation areas. These criteria include:

- a. Acreage available in a single block;
- b. Nature of surrounding land uses; and,
- c. Incompatibility of current use for agriculture.

The standards spelled out in the Act as well as those adopted by the ALPB are used by the State to evaluate lands proposed for agricultural preservation or lands proposed for transition zones. The definition of agricultural lands is a broad one and leaves considerable discretion to Counties.

#### (4) Implementation

The fourth section sets forth guidelines governing the implementation of the plan. The implementation of the plan must set forth actions necessary to preserve agricultural lands and guide urban growth. At a minimum, this includes: (a) description of land use controls and programs to implement the

policy statements of the plan; (b) description of the character, location, timing, use, capacity and financing of existing and proposed public facilities to serve existing and new development; (c) identification of procedures and standards for controlling the installation and maintenance of private waste disposal systems, including identification of areas which are not suitable for private disposal systems; and, (d) protection of areas of special environmental, natural resource, or open space significance.

#### (5) Board Review and Certification

The final section sets forth the review procedures to be used by the Agricultural Lands Preservation Board in the certification process.

The ALPB assists the Counties in their planning in three ways. First, the state provides for planning grants to Counties. Second, the State staff assists counties on a case by case basis during the planning process. Third, the State staff has publishes guides to planning and zoning as well as guides to mapping. These guides, written for citizens and planning commissioners, provide detailed step-by-step procedures for local governments to follow in their planning process.

#### Zoning Standards

In addition to planning standards, the Farmland Preservation Act also established requirements for exclusive agricultural zoning. These requirements are to be met by counties or townships in developing and adopting exclusive agricultural zoning. The same requirements are used by State staff to evaluate local regulatory programs.

The Act established minimum requirements for exclusive agricultural zoning. This means that counties or townships may adopt (and some have) more restrictive zoning ordinances. The law also requires that the exclusive agricultural zoning be consistent with the agricultural preservation plan. But since the Act permits rural counties to adopt zoning without a preservation plan or adopt a plan without zoning, there is some confusion over this consistency requirement. Nevertheless, where a rural county had an adopted preservation plan and where rural townships of the County have exclusive agricultural zoning, these zoning ordinances must be consistent with the plan.

According to the requirement, a "zoning ordinance shall be deemed an 'exclusive agricultural use ordinance' if it includes those jurisdictional, organizational or enforcement provisions necessary for its proper administration, if the land in exclusive agricultural use districts is limited to agricultural use and is identified as an agricultural preservation area under any agricultural preservation plans adopted under...and if the regulations on the use of agricultural lands in such districts meet the following standards which...are minimum standards:

- (1) ...the minimum parcel size to establish a residence or farm operation is 35 acres.
- (2) The only residences allowed as permitted uses (save existing residential uses) are those to be occupied by a person who, or a family at least one member of which, earns a substantial part of his or her livelihood from farm operations on the parcel, or is a parent or child of the operation of the farm....
- (3) No structure or improvement may be built on the land unless consistent with agricultural uses.
- (4) ....
- (5) Special exceptions and conditional uses are limited to those agricultural-related, religious, other utility, institutional, or governmental uses which do not conflict with agricultural use and are found to be necessary in light of alternative locations available for such uses. The department shall be notified of the approval of any special exceptions and conditional uses in areas zoned for exclusive agricultural use.
- (6) For purposes of farm consolidation and if permitted by local regulation, farm residences or structures which existed prior to the adoption of the ordinance may be separated from a larger farm parcel."<sup>31</sup>

The preservation law also sets forth requirements governing the revision of exclusive agricultural zoning. The local government may approved petitions for rezoning only after findings are made based upon the following considerations:

- "(a) Adequate public facilities to accommodate development will either exist or will be provided within a reasonable time.
- (b) Provision of public facilities to accommodate development will not place an unreasonable burden on the ability of affected local units of government to provide them.
- (c) The land proposed for rezoning is suitable for development and development will not result in undue water or air pollution, cause unreasonable soil erosion or have an unreasonably adverse effect on rare or irreplaceable natural areas."<sup>32</sup>



If lands are taken out of the exclusive agricultural zone, the lands become subject to the lien provided for the amount of tax credits paid in the last ten years on the land rezoned plus six percent interest if the tax credits are not repaid immediately.

### III. PROGRAM EFFECTIVENESS

Wisconsin has shown substantial and continuing progress in its preservation program. This is particularly noteworthy since, unlike most use-value assessment or agricultural districting programs, Wisconsin's effort is directed toward multiple clientele -- farmland owners, townships, and Counties. Each of the clients may respond to the program in different ways. The program is further complicated by an interim and permanent phase as well as by differing standards of performance for rural and urban counties.

Nevertheless, in the 27 months since the program began (December 1977-March 1980):

- 49 counties, representing over 81% of the State's farmland, are engaged in some planning phase of the program;
- 13% of the total farmland in the State is covered by certified exclusive agricultural zoning or by contracts;
- roughly 25% of the State's total farmland is covered by certified agricultural preservation plans.

#### Landowner Contract

The initial phase of the program permits farmland owners to enter into a contract with the State. This contract runs until October 1, 1982, when the permanent phase begins. As of December 1979, over 1700 farms are covered under contract.<sup>33</sup> These farms are exclusive of those which are currently covered under the long term planning and zoning measures. Over 452,000 acres are protected under contract for an average size of 265 acres per farm.

The State has also initiated work on long term contracts for landowners in rural counties with the certified agricultural preservation plan. Thus far, the State has entered into long term contracts with landowners from five rural counties.

Of the applications made for a long term contract, 138 are for the 10 year term and 39 for the 25 year term with the remainder falling between the extremes.

The data on long term contract signings are somewhat surprising since landowners lock themselves into a long term contract for little apparent gain.

Table 17-1

## LONG TERM CONTRACTS IN RURAL COUNTIES

<u>County</u>	<u>Initial Contracts</u>	<u>Application For Long Term</u>	<u>Signed*</u>
Barron	48	18	7
Columbia	25	9	4
Juneau	20	8	5
Pepin	57	56	30
Sauk	<u>146</u>	<u>105</u>	<u>48</u>
TOTAL	<u>296</u>	<u>196</u>	<u>94</u>

\* Note: The table only indicates signings to date (June 1980). Many of those landowners with initial contracts may yet enter into long term contracts, many without an initial contract may enter into a long term contract, and many of those who have made applications may yet sign.

SOURCE: Farmland Preservation Unit, Wisconsin Department of Agriculture, Trade and Consumer Protection

The tax credit available, for example, does not increase with the long term contract above that provided by the certified preservation plan. The only additional guarantees provided with the contract that are not available through zoning or the preservation plan are: (1) Exemption from special assessments for non-farm purposes; (2) Guarantee that the State will not require the landowner to grant public access to the land; and, (3) Additional protection against the County taking action to change the certified preservation plan or zoning ordinance in order to change the eligibility of any landowner; and, (4) Protection for the landowner from the State taking action to alter the landowners eligibility. More than anything, then, the contract offers additional guarantees that the landowner will continue to be eligible for tax credits.

#### Agricultural Preservation Plans

One of the key elements of the permanent program is the development and application of an Agricultural Preservation Plan at the County level. When coupled with a long term contract, this preservation plan permits landowner/farmers in rural counties to receive 70% of the permitted tax credit. In urban counties, the plan is not required to receive a tax credit (zoning is), but if the plan is adopted along with zoning, farmland owners are eligible for 100% of the permitted tax credit. Likewise, if a rural county adopts both

the plan and exclusive agricultural zoning, and, if required, townships adopt the ordinance, farmland owners become eligible for 100% of the permitted tax credit. Thus, both rural and urban counties have strong incentives to adopt the plan.

In the year following the effective date of the preservation program (December 1977 to December 1978), three counties had prepared and adopted their preservation plan. (See Figure 17-1) These plans were certified by the State. In each case these counties (Walworth, Jefferson, and Columbia) were heavily involved in farmland preservation before the state program became effective. Moreover, each of the counties was located next to rapidly urbanizing counties such as Dane, Waukesha and Kenosha and McHenry County, Illinois.

Thirteen months later (March 1980) nine additional counties had completed their plans and had them certified by the state. (See Figure 17-2) This made for a total of twelve Counties with certified preservation plans (out of a total of 71 Counties). The newly certified counties shared some common characteristics with the initial three counties. Most counties had at least considered agricultural land preservation issues previous to the effective date of the state program. But few of these counties had either adopted plans or regulations to protect agricultural land. Secondly, most of these nine counties shared similar development pressures with the initial three counties -- that is, the nine counties, with two exceptions, were located next to urbanizing counties in the northwest and southeast sections of Wisconsin.

The two counties, Juneau and Pepin, which were not located next to urbanizing counties, became the first rural counties to have their plans adopted and certified. Juneau and Pepin are the likely forerunners of several more rural counties which are currently engaged in planning and mapping projects preparatory to the completion of their preservation plans.

The progress in the development and certification of farmland preservation plans is proceeding in a logical fashion. First, those counties with the longest history in farmland preservation were the first to complete their plans and have them certified by the state. Second, those counties with at least some history in the farmland preservation issue were in the second wave of completion. Nearly all of these counties were located next to urbanizing counties. Finally, the preservation plan process is now heavily concentrated in rural counties (aside from the extreme northern rural counties which are forested).

This leaves the urbanizing counties. All of the urbanizing counties, with the exception of Ozaukee are engaged in planning and mapping projects. But progress in these counties is considerably slower largely due to the divergent development interests and difficulties in establishing planning and mapping criteria.

The difficulty is illustrated in comparing urban and rural counties. In rural counties it is fairly easy to identify large contiguous blocks of agricultural land. This, in turn, facilitates the identification of exclusive



Figure 17-1

# FARMLAND PRESERVATION

1-1-79



8006.418-XD

Source: Farmland Preservation Unit, Department of Agriculture, Trade and Consumer Protection, State of Wisconsin



PLANNING/MAPPING GRANTS



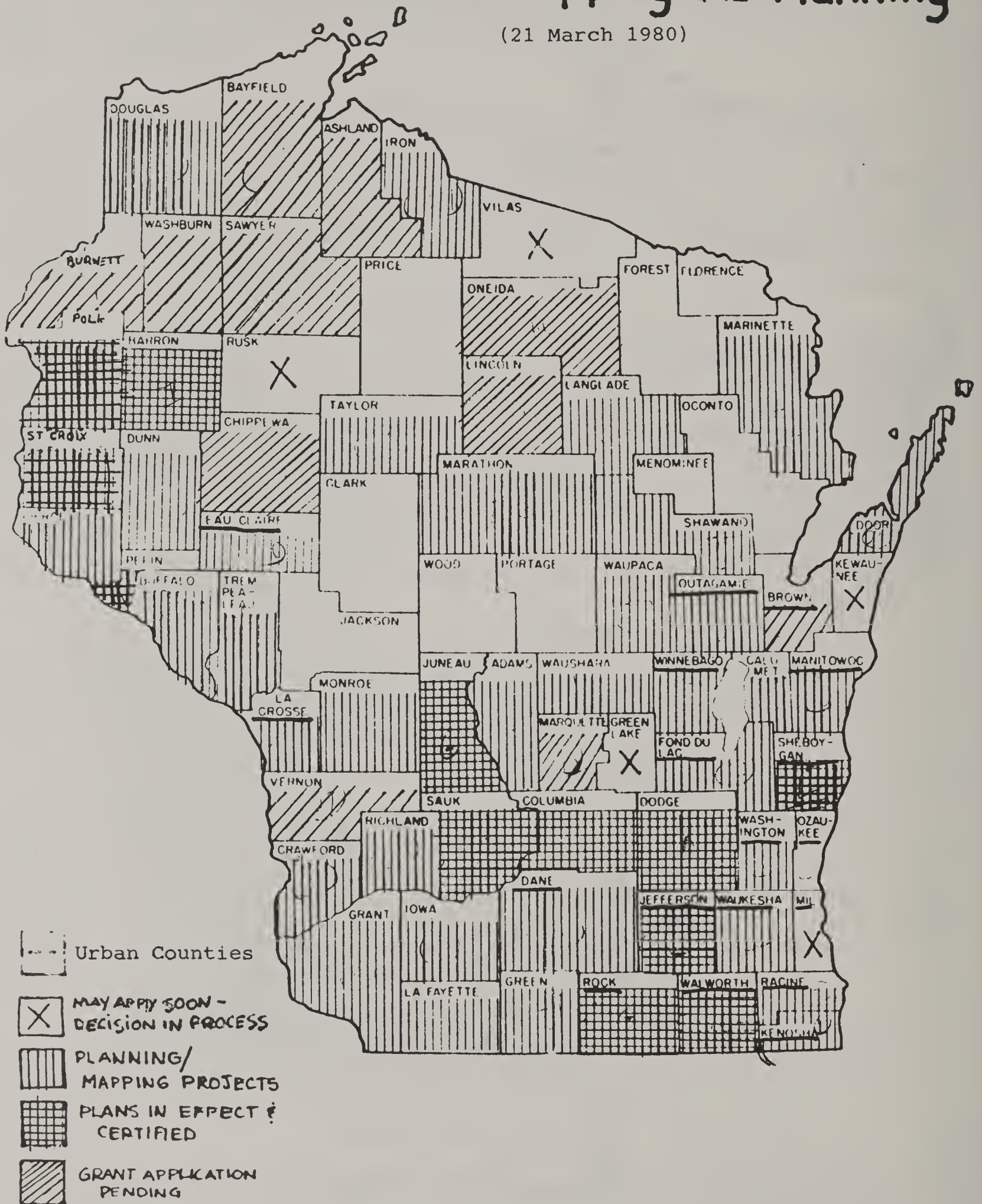
PLANS IN EFFECT & CERTIFIED

Figure 17-2

# FARMLAND PRESERVATION

## Mapping and Planning

(21 March 1980)



Source: Farmland Preservation Unit, State of Wisconsin



agricultural zones. But in urban counties, the lines of demarcation are not so clear. Large contiguous blocks of agricultural land are not common. This makes it more difficult to assess the long term viability of agricultural land use, and it makes it difficult to try to apply the same planning criteria to urban counties as were applied to rural counties. Similarly, when large contiguous blocks of land in agricultural use are not found, and when preservation plans for urban counties are dotted with smaller agricultural blocks, the question of voluntary or spot zoning arises. Unless the urban county follows the State's planning criteria in the identification of agricultural lands, the regulatory outcome would be questionable. For these reasons, the planning criteria for urban counties needs additional work.

### Zoning

Progress in the development and certification of County and Township exclusive agricultural zoning is surprising. Thus far over 10,750 farms have qualified for tax credits under exclusive agricultural zoning.<sup>34</sup> Yet as zoning typically sparks political resistance, particularly in rural areas, it would be logical to expect that in a voluntary program, zoning would lag behind both contracting and planning.

The adoption of exclusive agricultural zoning in rural counties is further complicated by the incentive of the Act and by procedural requirements contained in County zoning enabling legislation. The agricultural preservation program does not require rural Townships (Townships in rural counties) to adopt exclusive agricultural zoning in order for landowners to receive minimum tax credits. And, in most rural counties, each Township must adopt exclusive agricultural zoning in order to gain maximum tax credits for landowners.

In some urban counties, the County Board may adopt exclusive agricultural zoning and this zoning will apply in all Townships unless a majority of Townships pass resolutions objecting to the zoning. However, if urban counties merely amend their zoning ordinance to adopt exclusive agricultural zones, each Township must adopt the amendment if the zoning is to apply in that Township.

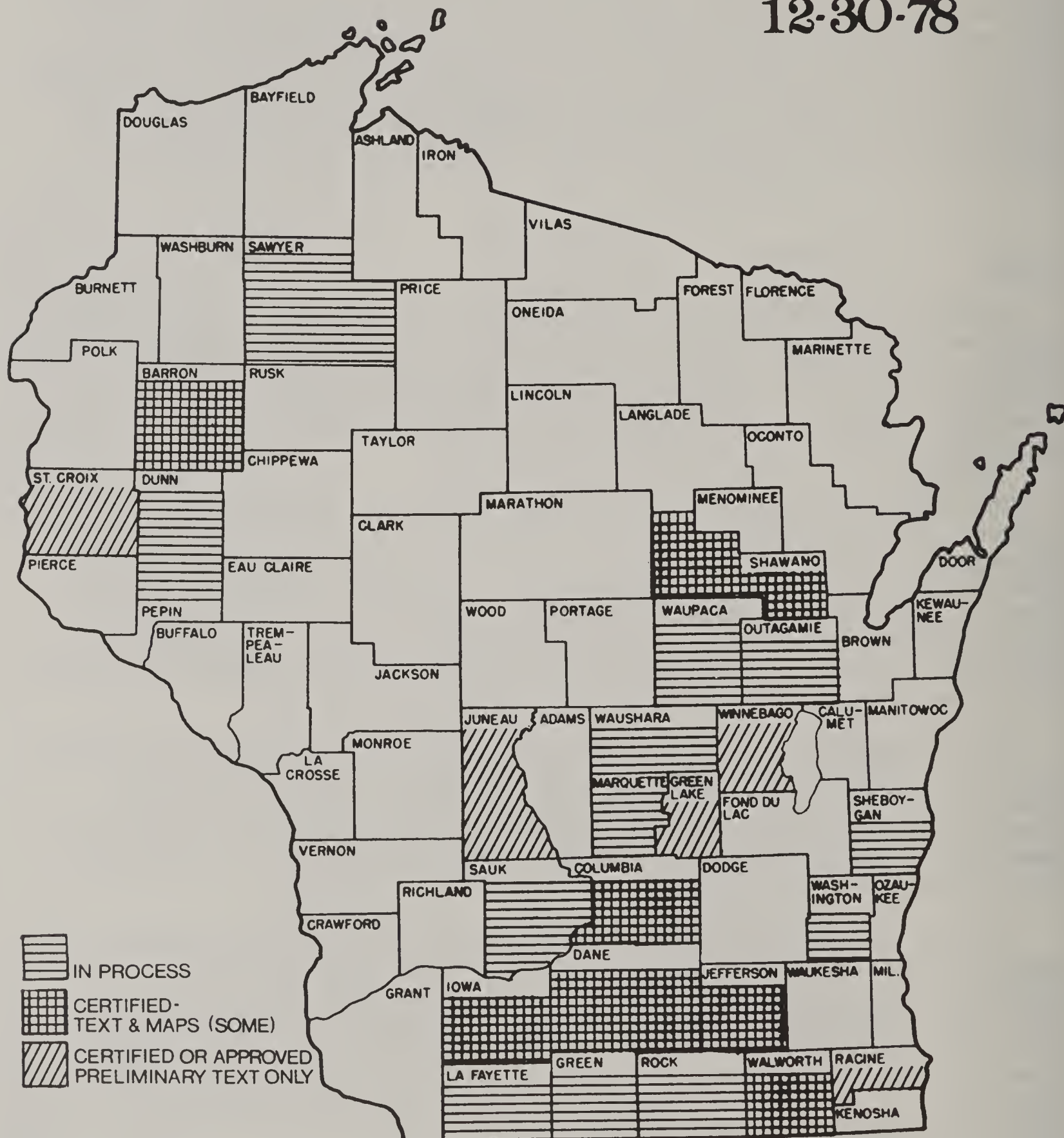
In spite of the complexities, 7 Counties with at least one Township adopting, had approved exclusive agricultural zoning ordinances by December 1978. (See Figure 17-3) Three of these seven (Walworth, Jefferson, and Columbia) also had completed their agricultural preservation plan. The remaining four, Iowa, Dane, Shawano, and Barron, were engaged in preparation of the preservation plan but had not completed the process. Once again, all of these counties were either urbanizing or adjacent to urbanizing counties. In this first year, there were no rural counties with approved exclusive agricultural zoning.

By December 1979, an additional six counties had joined the initial seven for a total of 13 counties. (See Figure 17-4) In each County, at least one



Figure 17-3

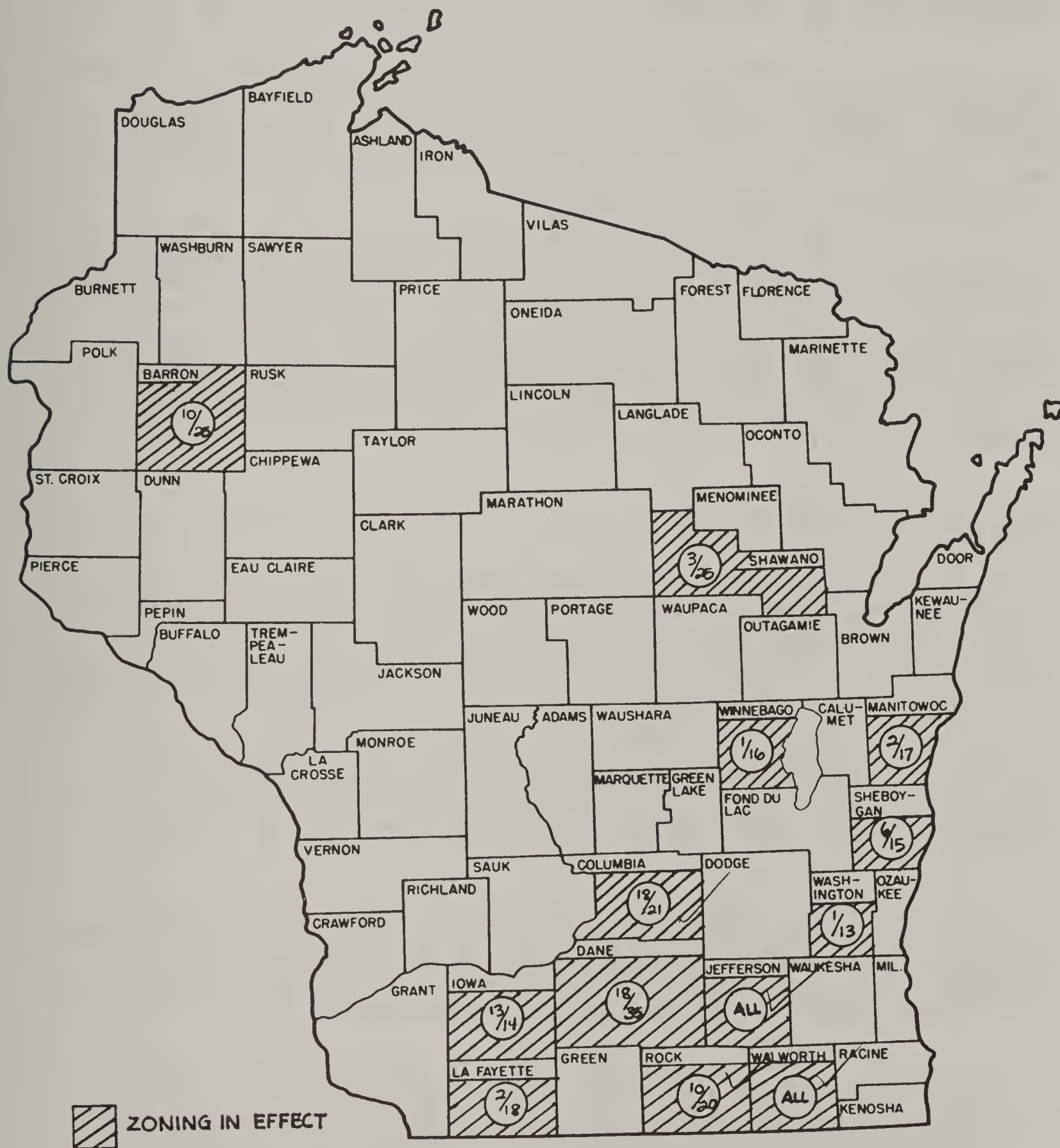
# EXCLUSIVE AG ZONING ACTIVITY 12-30-78



Source: State of Wisconsin, Department of Agriculture, Trade and Consumer Protection, Farmland Protection Unit.

Figure 17-4

# EXCLUSIVE AG ZONING IN EFFECT 12-31-79



8/16

TOP NO. - TOWNS THAT ADOPTED ZONING  
BOTTOM NO. - TOTAL NO. OF TOWNS IN COUNTY

Source: State of Wisconsin, Department of Agriculture, Trade and Consumer Protection, Farmland Protection Unit.

Township had adopted exclusive agricultural zoning. The counties were heavily concentrated in the south central, lakefront, and northwest sections of the state. But as happened with the farmland preservation plans, rural counties such as La Fayette and Iowa began to appear in the process. In La Fayette County 2 of 18 Townships passed exclusive agricultural zoning ordinances while in Iowa County all Townships (14) adopted exclusive agricultural zoning ordinances.

Of the Counties adopting exclusive agricultural ordinances, only three have had the ordinance adopted by all townships -- Walworth, Iowa, and Jefferson. Columbia County had its ordinance adopted by a substantial majority of townships while Rock and Dane County have had roughly half of their townships adopt. In the remaining seven counties, less than half of the Townships have adopted the ordinance.

In general, the adoption of zoning ordinances follows the preparation and adoption of the preservation plan and, to date, over eighty townships have approved. Because participation in the tax credit program requires zoning in urban counties, continued progress is expected in these areas. However, because the zoning ordinance is not required in rural counties, progress in rural counties might be slower. Currently, however, there are five rural counties with agricultural zoning adopted in at least one township.

#### Urban and Rural Participation

As the program features varying requirements for urban versus rural counties, it may be useful to examine the rates and types of participation to date. And although 68% of Wisconsin's 71 counties are participating in some fashion,<sup>35</sup> it is important to examine those counties with adopted and certified preservation plans and/or zoning ordinances. (See Table 17-2)

In urban counties, the program emphasizes the adoption of zoning ordinances as the sine qua non of participation. Thus one expects that urban counties would emphasize the preparation of zoning ordinances as the beginning step and, later, may prepare preservation plans to increase permissible credits.

Currently, 8 of a total of 18 urban counties have adopted zoning ordinances in at least one township. Four of the 18 counties have adopted preservation plans and 5 of the 18 counties have adopted plans and ordinances in at least one-third of the townships. These data conform to the principal incentives of the program for urban counties.

Of a total of 53 rural counties, 8 have adopted preservation plans. Five counties have had at least one of their townships adopt an exclusive agricultural zoning ordinance. Two counties have adopted a preservation plan and have had at least a third of their townships have adopted exclusive agricultural zoning ordinances. Out of the 53 rural counties, 11 have had plans or township ordinances certified by the State.



Table 17-2

WISCONSIN COUNTIES WITH ADOPTED PRESERVATION PLANS AND/OR ZONING ORDINANCES

COUNTIES	(1) 78 POPULATION	(2) 7 - TOTAL EMPLOYMENT	(3) TOTAL EMPLOYMENT FARM	(4) FARM % TOTAL EMPLOYMENT	(5) TOTAL ACRES	(6) PRIME ACRES	(7) % PRIME	(8) *ZONING # OF TOWNSHIPS	(9) PRES. PLAN
Barron	37,541	16,736	3,244	19%	552,960	238,574	43%	10/25	Yes
Columbia	42,458	20,133	3,522	17%	496,640	173,103	34%	18/21	Yes
Dane (Urban)	318,991	175,633	7,033	4%	766,720	361,546	47%	18/35	
Dodge	73,905	30,033	4,788	16%	568,960	329,396	58%		Yes
Iowa	19,423	8,237	2,562	31%	487,680	97,869	20%	A11	
Jefferson (Urban)	65,384	29,965	3,655	12%	360,960	187,060	52%	A11	Yes
Juneau	19,240	8,106	1,290	16%	495,360	66,801	13%		Yes
LaFayette	18,024	7,344	2,697	37%	411,520	151,984	37%	2/18	
Pepin	7,545	2,904	757	26%	150,400	28,431	19%		Yes
Polk	31,322	12,777	2,928	23%	595,840	191,439	32%		Yes
Rock (Urban)	134,442	60,308	3,587	6%	461,440	262,579	57%	10/20	Yes
St. Croix	41,397	14,938	2,888	19%	469,760	256,575	55%		Yes
Sauk	40,649	20,683	3,364	16%	538,240	132,042	25%		Yes
Shawano	35,758	14,343	2,948	21%	818,560	60,986	7%	3/25	
Sheboygan (Urban)	101,314	48,944	2,662	5%	323,200	175,584	54%	6/15	Yes
Walworth (Urban)	69,489	29,618	2,621	8%	356,480	220,209	62%	A11	Yes
Washington (Urban)	83,822	30,147	2,036	7%	274,560	131,452	48%	1/13	
Winnebago (Urban)	132,532	64,093	1,961	3%	286,720	189,266	66%	1/16	
Manitowoc (Urban)	83,059	37,590	3,074	8%	377,600	242,936	64%	2/17	

\* # of township adopting Out of all townships

Table 17-5

Table 17-5 Sources:

1. U.S. Department of Commerce, Bureau of the Census, Current Population Reports, Series P-25, "Population Estimates for Counties, Incorporated Places, and Minor Civil Divisions."
2. U.S. Department of Commerce, Bureau of Economic Analysis.
3. Ibid.
4. Item 2 / Item 2.
5. U.S. Department of Commerce, Bureau of the Census, County and City Data Book, 1972.
6. U.S. Department of Agriculture, Soil Conservation Service, "National Inventory of Soil and Water Conservation Needs," 1967
7. Item 6 / Item 5.
8. Farmland Preservation Unit, Department of Agriculture, Trade and Consumer Protection, State of Wisconsin, 1980.
9. Ibid.

The type of participation by urban and rural counties conforms to the principal incentive of the program. But in both rural and urban counties, considerable activity has occurred in the preparation and certification of plans or regulations which permit resident landowners to reach maximum levels of participation. On-going work indicates that urban counties continue to emphasize exclusive agricultural zoning while rural counties emphasize preservation plans, but in both cases additional plans or regulations are being prepared.

#### IV. PERCEPTIONS OF PARTICIPANTS

Interviews with county planners, extension agents, and others in seven counties revealed substantial satisfaction with the program. All seven counties -- Juneau, Sheboygan, Barron, St. Croix, Iowa, Jefferson, and Walworth -- are participating in the program through certified preservation plans or exclusive agricultural zoning ordinances or both.

Most officials felt that the program would be effective in protecting agricultural land. In a few cases, planners noted that the adopted plans and regulations had altered earlier patterns of land development, channelling new development into established population centers and out of agricultural areas. But planners also noted that the price of energy coupled with high mortgage costs also lessened the development pressures in agricultural areas.

Respondents also noted that the net effect of the program is broader than the single issue of agricultural land protection. Since the program places agricultural land protection in the context of broader planning issues, the work on agricultural land protection brings other planning concerns to the forefront. This includes consideration of lands to accomodate new development, protection of fragile environmental areas, provision of public facilities and services, and planning for housing, economic development, transportation and the like. As a result, the program has raised the planning consciousness of citizens. In some cases, for example, where a community has prepared a comprehensive plan, the program provided the necessary incentive to adopt land use regulations to implement the plan. In other cases where the community had an adopted zoning ordinance, the program provided the incentive to complete a community plan.

Officials saw that the program was taking hold across the State in a threefold ripple effect. The effect can be seen between farmers, between townships, and between counties. With the farmers, the effect occurs when one or more receives an income tax rebate. As described by one planner, "Once the farmers began to receive their rebates all debate over 'private property rights' stopped. Today our office resembles the local H and R Block Tax Office. Farmers no longer care to debate the land use implications of the bill. All they want us to do is help them fill out the income tax rebate form for them."



A similar effect is seen between Townships in a County. When one township passes zoning and farmers in the township become eligible for 70 percent or 100 percent of the maximum tax credit, other townships become interested. County plans and regulations spark a similar response on the part of surrounding counties. A review of Figures 17-2 and 17-4 points up the nodes of local planning and regulation stemming at least partially from this ripple effect. The key to the ripple effect, however, is with the single farmland owner holding an income tax credit. Once the money is in hand, the process begins, from one farmer to the next, one township to the next, and one county to the next.

The satisfaction was attributed to several program characteristics. First, the program was based upon financial incentives to local landowners. This has sparked increased local planning and zoning efforts since increased planning and zoning at the local level translates into increased tax credits for landowners. In fiscal year 1978, for example, 727 farmers received tax credits averaging 870.49.<sup>36</sup> This was the first year of the program. By the end of fiscal year 1979, 3,057 farmers received tax credits which averaged \$1,112.75, and by the end of fiscal year 1980 the average estimated tax credit will rise to roughly \$1,600.00.<sup>37</sup> In each of the seven counties, respondents indicated that the financial incentive was of central importance in adopting a plan or ordinance or in amending an existing plan or ordinance.

Respondents also noted, as a second factor, that the program is voluntary at the local level and consequently is not perceived as a 'state land use control program.' Initially, some objections were raised at the local level but in most cases were overcome by the character of the law (the program is voluntary) in combination with the financial incentive to landowners.

It should be noted, however, that strong objections to the program were raised in two counties -- Wood and Clark. In the two counties, the County Boards opposed both the planning and zoning features of the program as unacceptable infringements on property rights. Applications from landowners in the Counties for participation in the program were routinely rejected by the County Boards. In several cases, the landowners made successful appeals to the ALPB. Still, when the initial phase terminates in October 1972, the participating landowners in Wood and Clark will likely be faced with a rollback penalty if the Counties do not have certified plans. One would expect that participating landowners in Wood and Clark will put pressure on their respective County Boards to get such plans adopted and certified.

The third factor cited by respondents was that the appeal of the program extends to urban and suburban citizens who are attracted to the program's open space and environmental protection facets. Since the incidence of tax shifts does not effect urban and suburban dwellers except through the tax contributions to the general fund, the returns to these citizens are perceived as high benefits with low costs.

Respondents also cited the financial aid available from the State to counties to help prepare preservation plans. While the money must be used for the preparation of the plan, the legislation does not require that the County adopt the plan once it is prepared. Nevertheless, most counties, having received planning grants, have made substantial progress in getting their plans adopted and certified. The financial aid has proven extremely important to rural counties with little history in planning and with few resources available to devote to planning. In several cases, the program's financial aid has made the difference between some local planning and none at all.

Respondents felt that the heavy program emphasis on citizen participation at the County and Township levels had added to the program's effectiveness. In particular, there was near unanimous agreement on the positive role of citizen advisory committees in the planning and zoning process. Generally, these committees represented a wide range of community interests, from farmers to developers, and, as a result, the plans and regulations were anchored in the needs and desires of these interests. The state guidelines and review process insured that the plans and regulations met the purposes of the legislation, but the citizens advisory groups insured the plans and regulations meet local needs.

Most citizen advisory committees spend considerable time and effort working at the township level. The purpose is to explain the program and to solicit comments and suggestions. As a result, most plans and regulations are built up from this basic unit of government. This, in turn, makes the decision of the County Board much easier to make.

One of the interesting by-products of the program is the type of individual at the County or Township level who eventually leads the local effort. At first, the County Board (up to 35 members) assigns the responsibility to a committee of Board members such as the Agriculture Committee or the Planning and Zoning Committee. This Committee often passes the responsibility to a technical working group in conjunction with a citizens advisory group. But leaders have been assistant district attorneys, county clerks, agricultural extension agents, board members, planning commissioners, farmers and others.

Criticisms of the program centered less on substance than degree. For example, many farmers feel that the income limit is set far too low and that the property tax limit doesn't go high enough. However, 90% of the state's farmers are potentially eligible for the program.

Early in the program some farmers criticized the program as a welfare program which rewarded poor farming performance. However, since income limits have been raised, this criticism has been muted. One planner responded to the welfare charge in this way, "For all of our lives we've been sending money down to Milwaukee. Now we've got a chance to get a little of it back."



Because this is a complex program serving multiple clientele, there is considerable confusion among farmland owners and local officials. Land-owners and officials must grapple with an interim program, a permanent program, contracts, plans and zoning regulations. The rules change in urban versus rural counties. The potential for misunderstanding is great, and in many cases, misunderstandings have occurred. Given the complexity, it is surprising that so much progress has been made. The program staff have spent considerable time and effort to carry the program to the counties and townships and to clear up misunderstandings. Nevertheless, the program is still plagued in some counties and townships by poor understanding on the part of landowners and local officials.

Two concerns with the program center on eligibility requirements and the possibility that tax credits may be going to unintended beneficiaries. The first concern is with the potential of hobby farm owners to gain credits. A review of over half of the contracts issued (roughly 800 of 1600) shows that 22 contracts involved 65 or fewer acres.<sup>38</sup> Of the 22, 6 parcels, for accounting reasons, had been split off of larger parcels. Of the remaining 16, 5 parcels were supporting dairies, hogs or poultry. Ten of the remaining parcels were used primarily for crops while the remaining 1 parcel was in use as an orchard. Thus out of 800 contracts as many as 16 may involve hobby farms, but is likely that 10 or fewer are involved which is slightly over 1% of the contracts issued.

Two eligibility requirements argue strongly against the enrollment of hobby farms. The first requirement is the 35 acre minimum which eliminates the typical 5, 10, 15 or twenty acre hobby farm. The second requirement, which is perhaps more effective than the first, requires that participating landowners show gross farm revenues of \$6000.00 for the year previous to application or \$18,000.00 for the previous three years. The review of contracts appears to indicate that few, if any, hobby farm owners are participating.

A second concern with the program is that tax credits may be going to large corporate farms. Although the Act does not specifically identify intended beneficiaries by type of ownership or by the levels of owner's assets, the income standards indicate that the Legislature intended benefits for those with the highest property taxes and lowest incomes. As a result, the general public perception of the program is that it is aimed at middle and lower income family farms.

The structure of the income standards, however, makes it quite possible for large corporate farms to gather the largest tax credits. One program staff member noted that "many prosperous farmers with high gross incomes are receiving tax credits under the program. This is because their depreciation schedules reduce their net incomes substantially."

Additional evidence may be found in the average size farm of the program participant which runs at 267 acres compared to a statewide average of 196 acres.<sup>39</sup> While the difference in the average may be due to differences in farm definition, the net difference of 71 acres is substantial. Thus, there



is some indication that large farms are receiving sizeable credits which runs counter to the public image of the program. The State Department of Revenue is currently examining income standards, but no major changes have been proposed.

The income standard which may come under question certifies landowners on the basis of net income versus gross income or other indication of cash flow. A large gross income is easily offset by depreciation which then leads to a low net income in spite of substantial assets and cash flow.

Very little criticism has been raised pertaining to the incidence of tax shift caused by the program. The lack of criticism is due to two major factors. First, the tax credits do not come out of local revenue funds but out of State general fund. As a result, the program has no revenue impact upon local units of government. Second, the tax credits in the State general fund represent only a tiny fraction of the total general fund (.001%).<sup>40</sup> Over time, the farmland preservation program will take a larger percentage of the State general fund, but even if all eligible farmers participated in 1979, the total tax credit would have ranged between 80 to 100 million, which would represent between two and three percent of the 1979 general fund. At the same time, the total tax credit of 80 to 100 million would represent roughly one third of total agricultural property taxes for the same period. Thus at some point the incidence of tax shift may become a major issue for the program, but to date it has not been a serious issue.

## V. COST OF PROGRAM

Costs of the program can be broken down into three main areas; administrative, planning/mapping, and cost of tax credits.<sup>41</sup>

### Administrative

The state program staff is currently composed of 3 professionals and one secretary. The program budget has grown steadily in the first three years, but following the current budget, no major expenditures increases are anticipated.

1977-78	70,900	(actual expenditure; 1/2 year of operation)
1978-79	114,300	(actual expenditure)
1979-80	153,000	(budgeted; actual will be slightly less)

### Planning/Mapping

In the first two years, \$1.6 million was appropriated and spent on planning and mapping at the local level. These grants were made available from the Farmland Preservation Office (\$800,000) or the Department of Local Affairs and Development (\$800,000) for the total of \$1.6 million.

Tax Credits

In fiscal 1978, the first year of the program, credits totaled \$633,000. In fiscal 1979, total tax credits jumped to \$3.4 million, and in fiscal 1980 tax credits are expected to increase substantially over the fiscal 1979 total. Legal Challenges: None.

FOOTNOTES

1. Wisconsin Department of Agriculture, Trade, and Consumer Protection, "Agriculture: Number One in Wisconsin," Madison, Wisconsin, 1979.
2. Ibid.
3. Ibid.
4. Ibid.
5. Ibid.
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7. U.S. Department of Commerce, Bureau of the Census, 1978 Census of Agriculture, Preliminary Report, Wisconsin, October 1980, Table 1.
8. U.S. Department of Commerce, Bureau of Economic Analysis.
9. Wisconsin Department of Agriculture, Trade, and Consumer Protection and U.S. Department of Agriculture, Economics, Statistics and Cooperative Service, Wisconsin Agricultural Statistics 1979, Wisconsin Agricultural Reporting Service, Madison, Wisconsin, 1979, Page 3.
10. Ibid, Page 5.
11. Ibid.
12. U.S. Department of Commerce, Bureau of Economic Analysis.
13. U.S. Department of Commerce, Bureau of the Census, Current Population Reports, Series P-25, "Population Estimates for Counties, Incorporated Places and Minor Civil Divisions."
14. The material on the political history of the Act was taken from: Barrows, Richard L., "Wisconsin's New Farmland Preservation Act: A Comparison With Other States," in Economic Issues, University of Wisconsin - Madison, College of Agricultural and Life Sciences, Department of Agricultural Economics, Number 13, September 1977, Page 1.
15. Wisconsin Statutes 71.09(11); 91.11 - 91.79; as amended July 1979.
16. Ibid.
17. Ibid, 71.09, 91.01.
18. Ibid, 91.13.
19. Ibid, 91.13, 91.15.



20. Ibid, 91.31.
21. Ibid, 91.13.
22. Ibid, 91.19.
23. Ibid, 91.21.
24. Ibid, 91.11.
25. County and Township enabling legislation in Wisconsin is exceedingly complex. There are a variety of situations which could arise in any one Township that would require different actions than the ones described in the text. For a discussion of these, see Yanygen, D., and Barrows, R., Zoning To Preserve Agricultural Land, University of Wisconsin-Madison, Madison, Wisconsin, March 1980, Pages 13,14.
26. Wisconsin Statutes, op. cit., 91.19.
27. Ibid, 91.53, 91.55, 91.57, 91.59.
28. Department of Agriculture, Trade and Consumer Protection, Agricultural Land Preservation Board, Planning Standards, Farmland Preservation Program, Madison, Wisconsin, June 1978.
29. Wisconsin Statutes, op. cit., 91.55.
30. Department of Agriculture, Trade and Consumer Protection, Agricultural Lands Preservation Board, op. cit., and Department of Agriculture, Trade and Consumer Protection, Agricultural Preservation Board, Standards for Farmland Mapping, Farmland Preservation Program, Madison, Wisconsin, December 1977.
31. Wisconsin Statutes, op. cit., 91.75.
32. Ibid, 91.77.
33. State of Wisconsin Department of Agriculture, Trade and Consumer Protection, Farmland Preservation Unit, Technical Report No. 4, Participation in the Wisconsin Farmland Preservation Program, Madison, Wisconsin, 1979, Page 1.
34. State of Wisconsin, Department of Agriculture, Trade and Consumer Protection, Farmland Preservation Unit, Technical Report No. 5, Participation in the Wisconsin Farmland Preservation Program, Madison, Wisconsin, December 1979, Page 1.
35. Ibid, Page 1.
36. State of Wisconsin, Supra Note 33, Page 4
37. State of Wisconsin, Supra Note 34, Page 4

38. State of Wisconsin, Farmland Preservation Unit, 1980.
39. Wisconsin Department of Agriculture, Trade and Consumer Protection,  
Supra Note 9, Page 5
40. Wisconsin Department of Revenue, Staff Interview, 1980.
41. State of Wisconsin, Farmland Preservation Unit, Staff Interview, 1980.





## VII. COPING WITH PUBLIC AGENCIES



## Case Study No. 18

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Case Study No. 18  
THE TAKING OF FARMLAND FOR PUBLIC FACILITIES

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## I. INTRODUCTION

In contrast to other case studies, where the principal agents for land-use change were private developers, this study deals with conversion of farmland by public and quasi-public agencies (like power and gas companies). Each year during the mid-1970s (the most recent period for which data are available), governmental or quasi-public agencies nation-wide turned from 50,000 to 100,000 acres of rural land into highways, roads, and airports; about another 200,000 acres were flooded annually for reservoirs; and the sites for power plants, power lines, and pipelines consumed per year approximately 120,000 acres more.<sup>1</sup>

Much of the land obtained for these purposes was bought through voluntarily entered contracts between purchaser and seller. However, much land also changed hands over the protests of owners. And many of those protests involved charges that good farmland was being converted unnecessarily and/or that farming on land adjacent to highway, park, and other public-use projects was being needlessly disrupted.

If the owner of property sought for a public use refuses the highest offer made, the public or quasi-public agency which offered to purchase may have the power to "condemn" the land and then have a court determine a fair price to be paid to the owner. The right to acquire property in this fashion derives from the governmental power of "eminent domain," that is the

...power...to take private property for a public use without the owner's consent, on the payment of just compensation. Eminent domain is one of the sovereign power that, together with the power of taxation and the police power, is inherent in every "sovereign" government. Both federal and state governments in the United States use the eminent domain power to acquire land for roads, schools, public buildings, urban renewal, parks, or other public uses. State governments can, and usually do, delegate this power to municipal governments. Under limited circumstances, public utilities and

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\* Assisting in the field research for this study was J. Scott McDonald.

other private corporations may be authorized to exercise this power.<sup>2</sup> (Emphasis given)

This study discusses (1) major grievances which farmers experience when their land is taken for public purposes, (2) how farmers and other citizens have opposed the taking of farmland, and (3) what taking agencies can do to reduce conflict over farmland.

## II. FARMERS' GRIEVANCES OVER PUBLIC TAKINGS OF THEIR LAND

Farmers' grievances over eminent domain takings have included, among other charges, that sites with prime land were used when suitable locations of poorer farmland were available; project designs were faulty in that unnecessary amounts of good land were consumed and/or that farming next to the taken land was needlessly disrupted; projects--wherever they might have been placed or however designed--lacked sufficient justification; and landowners were notified too late in agency decision-making processes to be able to have much influence on decisions for sites, designs, and whether to build at all. Landowners are frequently dissatisfied also with agency offers of compensation for the land involved in takings. However, this study will focus on siting, design, project-justification, and landowner-participation issues.

### A. Project Sitings that Waste Good Farmland

Landowners in northwestern North Dakota opposed a flood-control dam and reservoir proposed by the U.S. Army Corps of Engineers, on the grounds that the site the Corps preferred (near Minot) would affect approximately 52,000 acres, whereas an alternative site up the Souris River would need only about 17,000 and, the farmers believed, do as good a job of flood control.<sup>3</sup> River valleys may be threatened also by highway projects, since the engineering problems and, hence, the costs of siting right of ways through valleys tend to be considerably less than building on hills off the valley floor. Transportation departments may not be willing to trade off substantially higher construction costs for the protection of cropland or pasture. But in at least some cases, they have been. For example, California's Stanislaus County has a rich and varied agricultural sector based primarily in the San Joaquin Valley. When the segment of Interstate 5 to run through the county was being planned, one of the options discussed was a right of way through the flat, easy-to-build-on valley. Local officials protested, and the final site was on low hills just at the western edge of the valley.<sup>4</sup>

An example from Illinois concerns a proposed regional airport in the north-central part of the state. The Illinois



Valley Port District proposed a site on about 600 acres of flat farmland in Bureau County, while a Council of Government which provides planning services to that county and three others recommended an alternative site, "the abandoned strip mine near Utica, Illinois...[because it] is closer to the center of population and would put to use distressed lands," as opposed to the excellent cropland on the site preferred by the Port District.<sup>5</sup> The strip mine location posed much more serious engineering problems, but it was idle land; no productive use would be sacrificed in converting it into an airport.

## B. Project Designs that Waste or Disrupt Good Farmland: Highways

### 1. Freeways versus Expressways

In many design controversies involving highways, farmland owners fault transportation agencies for favoring freeways over expressways. Both kinds tend to have four or more lanes with opposing streams of traffic separated by median strips. However, freeways normally consume more land and are more restrictive of access. Freeways, for example, need extra land for the approaches to underpasses or overpasses and for the entrance and exit ramps at interchanges, whereas expressways tend to have all or most roads intersect at the same level as the expressway, with traffic controlled by stop signs or lights. In one Illinois case where farmers lobbied for an expressway design and the Department of Transportation favored a freeway, the difference over an 18-mile segment was estimated to be about 1,000 acres for a freeway versus approximately 750 acres for an expressway, or about 25 percent less.<sup>6</sup>

Farmers often prefer an expressway design also for its greater freedom of access. There tend to be more points of intersection than with a freeway design, so that farmers using the highway can get on and off closer to their farmsteads and fields. Freeways normally allow access only at interchanges and do not permit farmers whose fields have been bisected by the right of way to cross except at overpasses and underpasses, which may mean a long trip to the nearest one and an equally long ride back to the field across from where the farmer began. One Illinois farmer reported that, if a proposed freeway bisected his land as planned, the round trip for his farm vehicles would be seven miles: one mile to the nearest road which would cross over the freeway, a mile along that township road until it intersected with one that would parallel the freeway, a third mile down that road, and another half mile into where his field began, plus the total of 3.5 miles back to the farmstead on the other side of the proposed freeway.<sup>7</sup> The state would probably award him a cash settlement representing the depreciation in the value of the field severed from the rest of the farm. However,

he preferred the status quo, without any freeway disrupting his farm operations. Alternatively, with an expressway design, he might be able to cross right from his own property or at least at some intersection which probably would be a half mile or less away, since the public roads in his part of the state are usually no more than a mile apart, and an expressway design tends to permit intersection with all or most public roads.

## 2. Too Little Use of Existing Right of Ways

Another frequent farmer criticism of highway designs is that they make too little use of existing right of ways. Improving an existing highway such as by adding another two lanes and a median strip to a two-lane road, should have the two advantages over building on an entirely new right of way of (1) consuming less land and (2) disrupting less the farming operations on land adjacent to the right of way. One potentially very troublesome disruptive effect is the severing of farm parcels from the main body of a farm or from a needed water source. Severances resulting from the enlargement of an existing right of way should be marginal; the established road is already responsible for most of the serious divisions of land. However, with a new corridor, new and possibly severe divisions may occur. For example, a 6.3 mile stretch of new road in southwestern Wisconsin will cross eleven farm parcels, directly consuming 188.5 acres and negatively affecting an estimated 83.8 additional acres next to the right of way.<sup>8</sup> That additional acreage will include a 72-acre parcel that will be cut off from "a natural water supply [thus] depreciating its value as pasture land."<sup>9</sup> Four other farms will also have some land severed; and another, the site of an interchange, "will be so affected by severances and landlocked tracts that farming operations will cease" (see "Parcel 2" in Figure 18-1).<sup>10</sup>

Many farmers along that particular 6.3 mile stretch and other segments of the project wanted an existing state highway's right of way to be used to the maximum.<sup>11</sup> However, the state highway department faced local village governments which insisted on by-passes, so as to reduce the volume of traffic passing through their towns. And highway officials, themselves, tended to favor a new corridor for its safety advantages--it allowed for more use of underpasses and overpasses and for engineering gentler curves and grades. Although the 6.3-mile segment remained as a new corridor, a compromise was reached in that most of the remaining 19 miles of the project followed the existing highway's right of way.<sup>12</sup>

## 3. Diagonal Right of Ways

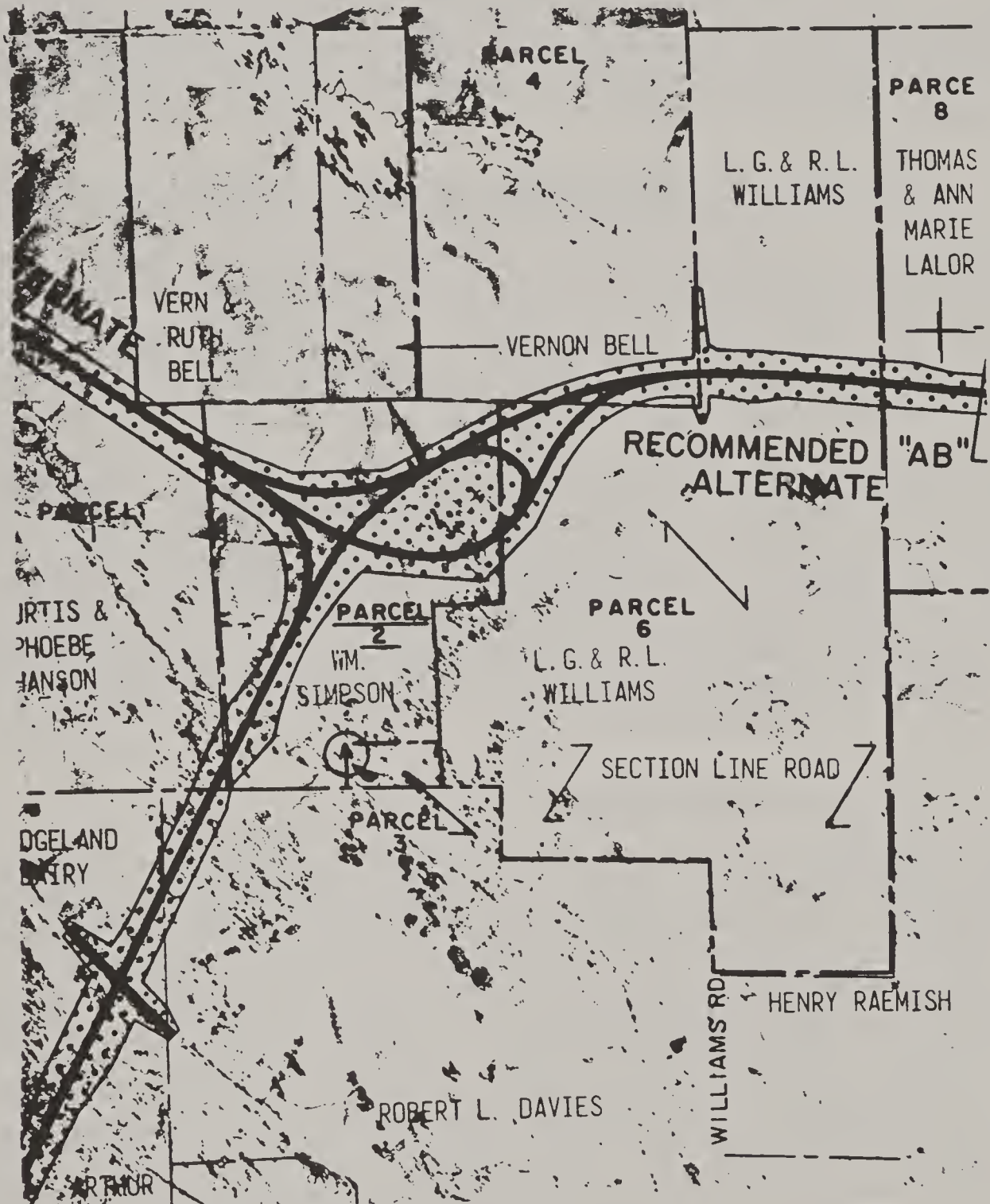
A third common grievance that farmers voice against road-building agencies is that the new rights of way they carve out frequently cut across farm fields on a diagonal. The resulting



Figure 18-1

PROPOSED INTERCHANGE: U.S. HIGHWAY 18/151

EAST OF DODGEVILLE, WISCONSIN



Source: State of Wisconsin, Department of Agriculture, Trade and Consumer Protection, "Agricultural Impact Statement for USH 18/151, Dodgeville-Mt. Horeb Road, from STH 191 to CTH 'Y' Section, Iowa County" (Madison, Wisconsin, November 1978).



triangular or trapezoid-shaped parcels are often too small or awkward to farm economically. Large machinery may not be able to negotiate the sharp-angled corners which a diagonal taking can leave. A particularly dramatic example is a proposed freeway that would run on a northwest diagonal 67 miles from Cedar Rapids to Waterloo, Iowa. The farm parcels along the proposed corridor tend to be laid out north-south and east-west. To minimize the number of parcels which will be left in odd shapes, a local group of landowners proposed that the new freeway "follow existing 2-lane highways, which run along quarter section lines" and estimated that their proposal would add only seven miles of road construction beyond the 67 required for a diagonal right of way.<sup>13</sup>

#### C. Wasteful and Disruptive Designs: Power Line Projects

A group of 80 farmers in northern Illinois faced a power company which planned to run across their land transmission lines for high-voltage electricity. The company normally hung the lines from four-legged towers which "are often more than 24 feet wide at the base, and...can be difficult to farm around ...."<sup>14</sup> In the past such lines had cut through fields, sometimes diagonally. However, this group of farmers bargained with the power company to achieve agreement on: (1) the lines would be placed only along field borders; and (2) the towers, themselves, would be "single tapered steel poles," which were only six to eight feet in diameter, rather than the up-to-24-foot space taken by the four-legged kind.<sup>15</sup> The single-pole towers cost the company more, but the farmers agreed to easier financial terms for the right of way than if the company had not conceded on the poles.

#### D. Entirely Unnecessary Projects

Farmland owners attack many public taking projects as entirely unnecessary--serving no public purpose or purposes sufficiently well to justify the expense of taxpayers' money and the losses of land and income to affected farmers. A farmer-County Board member in Illinois' Bureau County found no need for the regional airport proposed for a site in his county (see the discussion in Section IIA above). In his opinion, there would not be enough traffic to justify it "for 100 years," and "We can use helicopters to transport commuters and injured persons to Chicago or Rockford."<sup>16</sup> In another Illinois taking case that met strong local opposition, enemies of the project who were looking for reasons to challenge its need found them in a consultant's report to the Transportation Department, which stated, "[T]he present accident record is good and the estimated 1995 volumes would not require [a] freeway design."<sup>17</sup> Of course, future traffic levels might generate enough accidents to require some improvement, such as through an expressway design; but that part of the report undercut any claims that the project was urgently needed.

### E. Landowners Informed Too Late

Farmland owners who are affected by public takings frequently find that they learn about the pending project too late to be able to make much if any impact on siting and design decisions, let alone on whether the whole project should be shelved. By the time they first hear about it, such as when a public hearing is advertised in newspapers and/or they are invited by mail to attend, the money for the project may already have been appropriated and key agency staff may be committed to a particular site (or right of way) and to most major design characteristics. For example, when a hearing was announced for November 1972 on a highway project in central Illinois, the notice read:<sup>18</sup>

The proposed improvement will consist of the construction of a four-lane divided pavement with full access control. Access to the highway will be permitted only at interchanges....

Tentative schedules for right-of-way acquisitions and proposed construction dates will be discussed.

While, as this notice indicates, the Transportation Department was all set (with tentative dates) to buy land and begin construction on a freeway, farmers along the proposed corridor wanted to discuss an expressway design, with its expected smaller demands for land and freer access.<sup>19</sup> The Department retained its preference for a freeway, and for the following eight years of court challenges and related delays (to be discussed below in Section IIIF), it persisted in offering for public discussion only freeway designs.

In a contrasting Midwestern case, landowners became involved very early in the decision making process, but by a fluke. A television camera crew happened to be filming "an average work-day" for the state's Governor when an officer of that state's Conservation Department had an appointment to explain to the Governor a preliminary plan for acquiring farmland for a state park. Among the viewers of the resulting television program was an owner of some of the land being discussed. He contacted neighbors, and together they protested and caused the State's Department of Agriculture to conduct an assessment of the park project's likely impacts on agriculture in the area, with the possibility that if the estimated impacts appear to be seriously negative, the project will be modified or shelved.<sup>20</sup>

### III. APPROACHES TO OPPOSING OR MITIGATING TAKINGS

In opposing takings or trying to mitigate their effects, farmers have used individual appeals to agency decision makers, group lobbying, law suits, and combinations of those three approaches.



### A. Individual Appeals

Farmers have appealed directly and on an individual basis to the potential takers -- writing letters to, calling, or seeing in person officers of transportation departments, airport authorities, power companies, and other taking agencies. These appeals have included that only non-prime farmland be used; that the taking minimize the number of cases in which small, oddly shaped, or otherwise uneconomic parcels are created; and that, where highways divide the land used in single farm operations, underpasses be built at public expense to accommodate the livestock and/or machinery which must pass from field to field.

According to interviews with both farmers and officers of highway agencies in Illinois, New York, and Wisconsin, individual appeals that request design changes are frequently heeded.<sup>21</sup> However, fiscal and technical barriers prevent many from being acted upon favorably. For example, in the fall of 1980, it cost the Illinois Department of Transportation about \$1,200 per foot-long to build a 14-by-14-foot underpass, that is, one big enough to handle modern farm machinery as well as cattle.<sup>22</sup> If the underpass had to be 200 feet long (to reach under the roadway), its cost would reach \$240,000. Among the technical barriers may be the situation where there is too little non-prime land on which to site projects. This happened with a 69-mile tollway extension west of Chicago in the early 1970s. The four counties which the road would cross averaged 82.5 percent of their land surface as prime farmland.<sup>23</sup>

Individual appeals may fail also for careerist reasons. Agency officials may balk at changes in "their" designs for projects or see no personal benefit in spending the time to rework plans when only scattered individuals oppose them.

### B. Group Efforts

Working in groups, landowners threatened with a taking are more likely to muster the manpower and financial resources needed for success. The situation may call for hiring an attorney, funding some media advertising, and/or lobbying at multiple levels (e.g., the regional office of the federal agency which would provide most of the funding, the state agency which would do the building, and local governments whose opposition to the project would likely kill it). No single landowner or small group may have the time and money to mount the needed oppositional activities. Opposing the flood-control project in North Dakota discussed earlier (in Section IIA of this study) has been a group called Citizens United to Save the Valleys, which by early 1980 had about 3,000 members and had raised more than \$40,000 to oppose the dam-and-reservoir project.<sup>24</sup> The diagonal highway proposed to run between Cedar Rapids and Waterloo, Iowa (see Section IIB.3) has been opposed by the Farmland Preservation



Association, a landowners' group which hired an attorney and, as of early 1980, had "spent more than \$30,000 fighting the state department of transportation in court."<sup>25</sup> Officers of a protest organization formed to oppose a regional airport in northcentral Illinois stressed the manpower needs for success.<sup>26</sup>

You need people who are willing to give time:

- (a) To speak at County Board Meetings.
- (b) To recruit people to speak at public hearings.
- (c) To call radio and television and newspapers to get coverage.
- (d) To go to Chicago to talk to {U.S. Senators} Percy's and Stevenson's offices
- (e) To go to Springfield to lobby legislators and to get the organization incorporated.

### 1. Organizational Vehicles for Lobbying

Organizational vehicles for lobbying may already exist, such as in a local Farm Bureau, Grange chapter, or Soil and Water Conservation District. Alternatively, a new group may be formed, but with an existing organization giving assistance to it, such as in providing space for meetings, sharing mailing lists, publicizing the group's cause in newsletters, and legitimizing that cause by formally endorsing it. For example, the Kalamazoo County Farm Bureau in Michigan voted to oppose a regional airport project and, thus, helped a local group called Citizens Opposed to the New Regional Airport.<sup>27</sup> In regard to another airport project, for northcentral Illinois (see Section IIA above), leaders of a rural church which would have executive jets taking off and landing over it decided to support a local protest organization by giving it meeting space and publicity.<sup>28</sup>

### 2. Membership Sources for Lobbying Groups.

Protest groups may find members and/or financial support from, among other sources:

a. Farmers, both those directly jeopardized by the taking and those who may feel indirectly threatened, such as by the likely consequences of the project being completed, e.g., the urban-type growth which develops around airports or highway interchanges, the higher property taxes which population growth tends to bring, and also changes in a community's politics as development occurs, especially the likely decline in the relative political power of the farming sector.

b. Residents of nearby towns or rural subdivisions who respond out of concern for preserving the community's "quality of life"; airport projects, with their threat of noisy jets, are particularly vulnerable to broadly based opposition groups.

3. The Targets of Lobbying

The targets of group lobbying would include the taking agency, itself, plus various agencies and individuals who control or influence its behavior, such as any external funding sources and local, state, or federal bodies which either must approve particular projects or can discipline the taking agency in some way (e.g., having power over appointments to it, the assignment to it of jurisdictional authority).

a. Local Party Leaders

An experienced Farm Bureau lobbyist in one Midwestern state recommends to landowners who want to stop or modify a taking that, wherever possible, they work through the county chairman of the governor's party: "It's much easier to use the appropriate political connections than having head-butting contests."<sup>29</sup> In one case, for example, he advised the threatened farmers to call the Democratic County Chairman, who then contacted a staff member in the Democratic Governor's office, where eventually the decision was made to have the state's Department of Transportation shelve the project.<sup>30</sup>

b. Local Governments

Local governments may be important to lobby because, by formal or informal rules their approval of a project or, at least, the absence of opposition from them is necessary. In Wisconsin, for example, state law requires county approval of changes in the state highway trunk system which involve deviations from existing rights of way that exceed 2.5 miles.<sup>31</sup> In the above mentioned controversy over a proposed regional airport in northcentral Illinois, the County Board's approval was not legally essential, but politically important, since neither the state nor federal funding agency was eager to support a project strongly opposed at the local level. In March 1978 the Bureau County Board passed a resolution giving "moral support" to locating the airport in the County.<sup>32</sup> However, when a specific site was chosen, landowners in that township and other opponents formed a protest organization called HOE (Honor Our Earth). Following lobbying by HOE and other oppositional activity, the County Board in February 1980 voted 22 to 2 against the site proposed by the Port District.<sup>33</sup>

c. "A-95" Review Agency

The "A-95" review agency for any federally funded project may also be worth lobbying, since how it evaluates funding proposals may influence the decision of federal granting agencies. Under the A-95 review process, grant applicants for federal money must submit their proposals to a regional planning agency or other entity recognized as the area's "clearing house" for grant applications; this screening agency informs affected local



governments and solicits their comments on the applications; these reactions are fed back to the applicants who in turn may respond; the clearing house agency then evaluates the proposals for consistency with existing local, regional, and state plans, and submits all the information developed on the proposal to the federal granting agency.

#### d. Funding Sources

Lobbyists may of course choose to focus directly on the federal or state source of funding. Opponents of U.S. Army Corps of Engineers reservoir and other water resources projects have lobbied the committees of Congress which authorize and appropriate money for those projects. For example, in the Senate Appropriations Committee's hearings on the Corps' budgets for fiscal years 1977 to 1980, witnesses testified against 17 projects at least in part because of the threatened conversion of farmland or damage to adjacent farming.<sup>34</sup> Among those opposing witnesses were an officer of the North Dakota Farm Bureau, a county board president from Indiana, and the president of a local "protection association" in Kentucky.<sup>35</sup> Members of the staff of two U.S. Senate Committees which handle Corps matters--Appropriations and Public Works--advised opponents of Corps projects to focus their efforts on preventing the initial Congressional authorization, rather than waiting to influence the appropriations stage.<sup>36</sup>

#### d. Taking Agency

Lobbying the taking agency, itself, is likely to be more effective if the lobbying of other agencies and individuals who can influence the takers yields efforts from them to influence. The takers then hear the same message from many sources, one or more of which they may not be able to ignore. In the Illinois regional airport case, when the Port District held its public hearing on a Bureau County site, it received negative testimony from two County Board members, a letter in opposition to the airport from the President of the Illinois Farm Bureau, protests from representatives of churches located near the proposed site, and testimony against the project from the main opposition group, Honor Our Earth (HOE).<sup>37</sup> HOE went on to lobby the state representative from the area, who reportedly wrote a letter opposing the site to the Illinois Division of Aeronautics, one of the funding agencies.<sup>38</sup> Also lobbied by HOE was the regional office of the Federal Aviation Administration, the main source of funds. In reaction to all this oppositional activity, the Port District began looking in the next county for an alternative site.



C. Court Suits

In conjunction with lobbying efforts, opponents of farmland takings frequently threaten or actually file court suits to stop projects. The most common grounds on which to base a suit appears to be NEPA (the National Environmental Policy Act of 1969), specifically its Section 102, which calls for detailed assessments of the likely environmental impacts of proposed federal actions, including the funding of state and local government projects that take land.<sup>39</sup> In these assessments, called "Environmental Impact Statements" (EISs), federal or federally assisted taking agencies should:<sup>40</sup>

(a) Rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated. (And)

(b) Devote substantial treatment to each alternative considered in detail including the proposed action so that reviewers may evaluate their comparative merits.

Farmers in southwestern Wisconsin used these aspects of NEPA to achieve desired modifications in a 25-mile highway project (Route 18/151 from Dodgeville to Mt. Horeb). As discussed above (in Section IIB.2 of this study), they wanted the project to use the existing right of way to the maximum possible extent. The state highway department, however, proposed to construct a freeway using a new right of way "for almost the entire U.S.H. 18/151 reconstruction."<sup>41</sup> A landowners' group, the Concerned Citizens of Iowa County, obtained a court injunction on the grounds that the draft EIS had failed to consider a reasonable array of alternative designs. The landowners wanted an expressway design based on the established corridor. The highway department, however, continued to recommend a freeway design and, after submitting a new EIS, had the injunction lifted in April 1975. But, as local opposition persisted and construction costs escalated, the state's Highway Commission in January 1976 "agreed unanimously to return to the concept, first proposed in 1963, of an expressway following the old ROW to a maximum extent possible."<sup>42</sup> The department admitted that these changes were responses, at least in part, to "public concern" over "land conservation."<sup>43</sup>

As of September 1980 this highway project will consist of one section of 6.3 miles at the western end which will follow an entirely new corridor and a remaining segment, 19 miles long,

which will follow "the existing right-of-way except for several town by-passes." <sup>44</sup> Moreover, it will be an expressway design, so that "all crossroads to the expressway will intersect level with the expressway, except some roads associated with community by-passes." <sup>45</sup>

Farmland owners opposed to a freeway planned for Morton to Lincoln, Illinois, also benefited from a suit based on NEPA's requirement of environmental impact statements. The suit was filed by Timothy Swain, an attorney who owned a 440-acre farm which the proposed freeway would bisect separating the farmstead, barns, and other improvements from the rest of the land. <sup>46</sup> In June 1974 Swain obtained a temporary restraining order on the grounds, among others, that the project's EIS was "insufficiently detailed under the applicable NEPA standards and illegally delegated to the state highway authorities {as opposed to being written by federal personnel} at the critical drafting stage." <sup>47</sup> Although the Federal District Court judge ruled against Swain and dissolved the restraining order, there was an appeal, with appellate judges imposing an injunction and ordering the Illinois Department of Transportation to draft a new EIS. Actually, the case was argued on appeal twice. The first decision (on April 29, 1975) agreed with the plaintiff's argument that NEPA called for the EIS to be drafted by the involved federal agency, not by a state highway department which was asking for federal money. The court reasoned that such agencies risked being too subjectively involved in projects and, hence, unable to give an "impartial assessment of environmental consequences which lies at the heart of the National Environmental Policy Act." <sup>48</sup> The court found also that the draft EIS was inadequate in several key areas. For example, <sup>49</sup>

{D}iscussion of the need for the proposed freeway was limited to one page of conclusory statements. No consideration of the alternative of upgrading existing {State} Route 121 was presented beyond a simple recitation that such an alternative existed. The alternative of no new construction whatever was dealt with in a a single paragraph....

The court concluded that the Federal Highway Administration had failed, as required by NEPA, "to conduct an independent, in-depth study of the potential environmental impact of the suit project" and that "further work on this federally funded highway must cease until a study is conducted and a proper EIS drafted." <sup>50</sup>

The same case was reheard by the appeals court a year later, after Congress amended NEPA to permit state agencies to draft EISs, as long as there is federal guidance, participation



in the drafting, and evaluation of the statement prior to its approval.<sup>51</sup> With that part of its 1975 ruling thus invalidated, the court reviewed the other issue: "the sufficiency of the final EIS prepared by the Illinois Department of Transportation...."<sup>52</sup> This time the court again found the EIS adequate, but on the grounds that the EIS of record covered only 15 miles of the entire 42-mile project. While another EIS had been prepared for the other segment of the proposed freeway, the court ruled:<sup>53</sup>

Segmentation of highway projects, although necessary to make their designs and construction more manageable, can limit the usefulness of environmental impact studies in two significant ways. First, the project can be divided into small segments; although the individual environmental impact might be slight, the cumulative consequences could be devastating. Second, the location of the first segment may determine where the continuation of that roadway is to be built. In such case, preparation of the EIS for the extension is no more than a formal task because the decision-maker's ability to choose a different route no longer exists.

Further work on the project was again suspended until submission of "a proper EIS" to the district court.<sup>54</sup>

These delays resulting from litigation provided enough time for opponents of the freeway design to generate considerable lobbying against it, enough apparently to convince the Illinois Department of Transportation (IDOT) to abandon its position of excluding any alternative except a freeway. The plans which IDOT initially developed after the second appeals court decision again recommended a freeway, but with the accompanying draft EIS focusing on the entire route. However, when IDOT scheduled hearings on the new set of plans, it encountered public opposition to the freeway concept. It had mobile vans stationed in four towns along the corridor to sample public opinion, and apparently most of the persons who expressed themselves favored an expressway design involving upgrading the existing highway (i.e., adding two lanes to Illinois Route 121).<sup>55</sup> As a result, the hearings scheduled for December 1979 were postponed until the spring. However, after more indications of public support for an expressway, including at meetings held by the Morton Chamber of Commerce,<sup>56</sup> IDOT decided against hearings that spring. As of September 1980, the Department was studying alternatives to a pure freeway design, including a "modified expressway," and expected to hold public hearings in the spring of 1981.<sup>57</sup>



As indicated by this Illinois example and also the previously discussed Wisconsin highway case, farmland owners are able to win significant concessions from taking agencies. However, the costs in time, money, and other resources (such as nerves) are likely to be high. Some accommodation on the part of taking agencies could reduce the costs to both sides. Delaying projects for six or more years is certainly not in the public interest, given the tendency for construction costs to escalate rapidly over time.

#### IV. WHAT TAKING AGENCIES CAN DO TO REDUCE CONFLICT OVER FARMLAND.

No one expects public agencies to cease taking farmland. The hope, rather, is to avoid unnecessary losses of good land and to minimize the negative impacts on farming when land is taken.

##### A. Early Notification about Proposed Takings

Farmland owners want early notification of takings affecting them, so that they may have a chance to influence the choices of sites, routes, and other design features. The mechanisms for early notification can vary. One state-level Farm Bureau in the Midwest has a working arrangement with that state's Department of Transportation to inform it of all planned projects involving farmland. That Farm Bureau office then contacts the relevant county Farm Bureaus which, in turn, notify those of their members likely to be affected. State legislators from farming areas may develop similar ties with taking agencies, asking as a matter of courtesy to be informed early in agency planning processes of projects likely to consume substantial quantities of land in their districts.

Notification before public hearings may be necessary, if an agency has a record of committing itself on almost all major locational and other design questions before going to the public. However, agencies may strongly resist early public discussion of their plans. An observer of the Army Corps of Engineers reported that some of the Corps' district officers have been reluctant "to expose project plans, for which they are personally responsible, to the stringent and often hostile scrutiny of many potential opponents in a community."<sup>58</sup> On the other hand, as indicated by the Illinois and Wisconsin freeway-versus-expressway controversies discussed above, agencies which fail to gauge well the local political support for different designs may waste years of professional time promoting designs that are not viable. Early exposure of plans can serve as "trial balloons." Moreover, early notification and public discussion of plans may be prudent

also for denying protesters a potentially important issue, that of the agency failing to consult early with landowners. An Illinois farmer involved in a taking case was convinced that, if he and other affected landowners had been consulted early in the planning process, "There would have been no opposition except for a few who were not satisfied with the price offered for the land."<sup>59</sup>

B. Better Documented Justifications of the Need for Public Takings of Farmland

A state government may avoid both unnecessary takings and troublesome critics of truly needed projects by mandating careful cost-benefit-type analysis for each major taking of farmland. New York and Virginia laws concerning "Agricultural Districts" (see Case Studies Nos. 1 and 2) require that, where state or local public agencies intend to acquire more than 10 acres from any one parcel in an approved Agricultural District or a total of 100 acres of land from any one district, prior notification must be made to the relevant county government in Virginia or to the Department of Agriculture and Marketing in New York. And accompanying the notification must be "a report justifying the proposed action including an evaluation of alternatives which would not require action within the agricultural district."<sup>60</sup>

Not all the good farmland in New York and Virginia has been included in Agricultural Districts, which are geographic entities formed at the initiative of farmland owners. State governments may prefer that regulations regarding early notification and careful justification of takings apply to any farmland in excess of some minimum amount of acres and/or where the parcels are classified as "prime." In July 1980 Illinois' Governor issued an Executive Order entitled, "Preservation of Illinois Farmland," which requires each of nine agencies of state government, including the departments of Transportation and of Conservation, to develop an "Agricultural Land Preservation Policy." That policy called for emphasizing Classes I through III land (as defined by the U.S. Department of Agriculture); and the state's Department of Agriculture was directed to monitor how the agencies implement their policies, including doing analyses of "State funded capital projects that impact farmland conversion...."<sup>61</sup>

C. Projects Designed so as to Minimize the Negative Impacts on Agriculture

Taking agencies need the analytical capability (or to tap someone else's) for assessing the likely negative impacts of alternative designs on agriculture. A model may be what



Wisconsin has been doing with "Agricultural Impact Statements." A 1977 law requires that state's Department of Agriculture to prepare an agricultural impact statement whenever an agency having the power of eminent domain plans to take five or more acres or, if less than five, "the condemnation will have a significant effect on any farm operation as a whole."<sup>62</sup> Statements prepared under this statute have assessed the potential adverse and/or beneficial impacts of what the taking agency proposes to do as compared to alternatives to the proposed action, thus giving both the agency and other interested parties information for approving or challenging the proposed taking and for identifying negative impacts which design changes may be able to mitigate.<sup>63</sup> Among the types of adverse effects discussed in these statements have been:<sup>64</sup>

- (1) Farmland to be taken, broken down by cropland, pasture, and woodland;
- (2) Severances and related access-to-fields problems;
- (3) "Changed field geometry" and the associated farm-machinery operation difficulties where parcels become too small or oddly shaped;
- (4) Disruption of field contours;
- (5) Damage to field tiling systems; and
- (6) Loss of farm structures.

## V. SUMMARY

Farmland owners fault public taking agencies such as highway departments, airport authorities, and flood-control agencies for projects that consume good land unnecessarily or that disrupt farming on adjacent land needlessly. Such projects are criticized for their sites, design features, and/or rationales for being built at all.

Landowners have fought such takings through individual efforts, group lobbying, and court suits, among other approaches. As indicated in the discussions above (Section III) about two freeway-versus-expressway design controversies (one each in Wisconsin and Illinois) and the airport siting conflict in northcentral Illinois, protesting landowners can achieve long delays in projects, win major design changes, and — so it seems in the airport case — defeat a site choice. However, such controversies may consume considerable time and other resources, so much so that taking agencies



may choose to adopt policies to head off or at least mitigate those conflicts. Among the steps they might well take would be (1) to base their decisions to float projects on more thorough cost-benefit-type analyses, particularly studies which assess the varied agricultural impacts; (2) to seek design features which minimize negative impacts on farming; and (3) to notify farmland owners early enough in the project's planning process that they may have opportunities to influence siting and design decisions that would vitally affect their farms.

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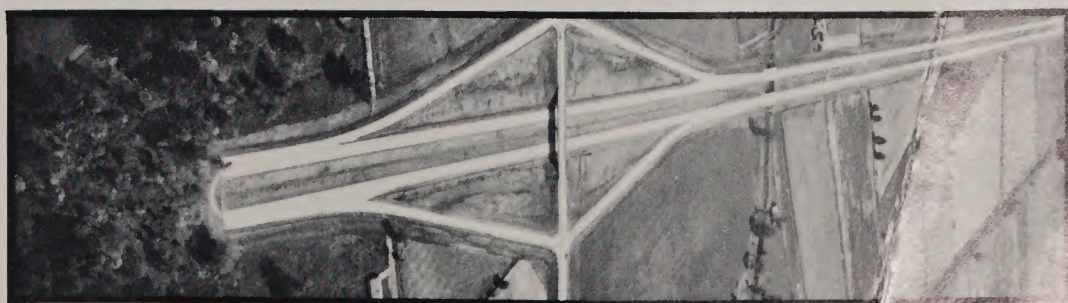
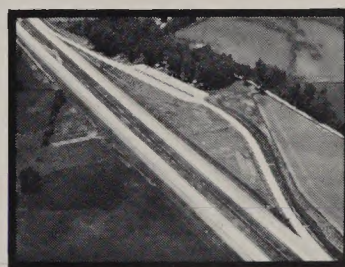
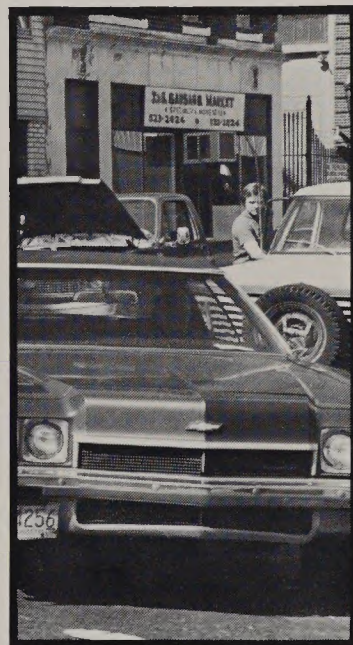
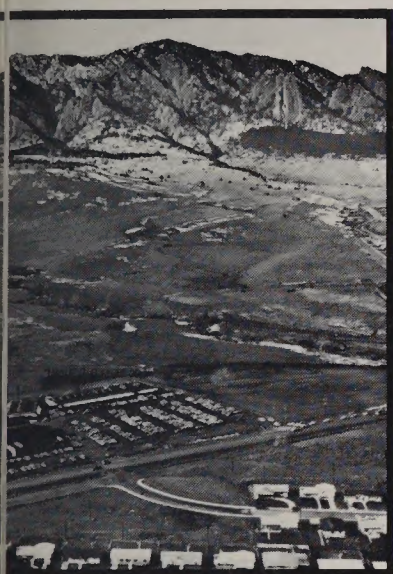
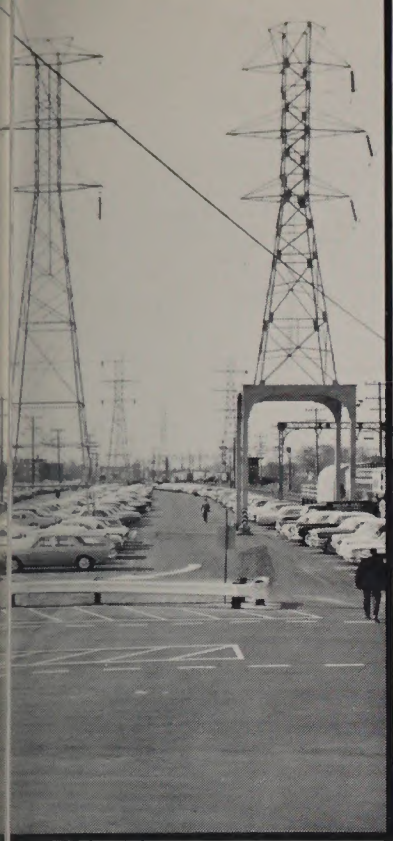
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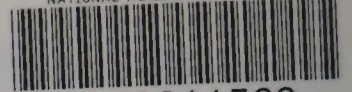


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## National Agricultural Lands Study

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Robert Gray  
Executive Director

Shirley Foster Fields  
Information Director

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### Participating Agencies

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Department of Commerce  
Department of Defense  
Department of Energy  
Department of Housing and Urban Development  
Department of the Interior  
Department of State  
Department of Transportation  
Department of the Treasury  
Environmental Protection Agency  
Water Resources Council